

16D C.J.S. Constitutional Law VIII XXII P Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

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Research References

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A.L.R. Index, Constitutional Law

A.L.R. Index, Due Process

West's A.L.R. Digest, [Constitutional Law](#) 🔑 4186, 4410 to 4427

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16D C.J.S. Constitutional Law § 2362

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Constitutional Law

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P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

1. In General

§ 2362. General considerations

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4410

Congress or the state legislatures may impose new obligations and responsibilities without violating the Due Process Clause, provided the act rests on a rational basis and is not arbitrary and irrational.

In the interest of the general welfare, the legislature may create liability where none existed, irrespective of fault or agency, without violating due process, provided it rests on reasonable grounds of policy.¹ Acts creating liability do not violate substantive due process rights when reasonably related to legitimate state interests.² For example, the extension of the doctrine of liability without fault—vicarious liability—to new situations to attain a permissible legislative objective is not so novel in the law or so shocking to reason or to conscience as to afford in itself any ground for the contention that it denies due process of law.³

Congress has considerable leeway to fashion economic legislation, including the power to affect contractual commitments between private parties, without effecting an unconstitutional taking, and for a claimant to succeed on the claim that the manner in which a statute imposes liability violates substantive due process, the claimant must establish that liability under the act is arbitrary and irrational.⁴ Legislation readjusting rights and burdens is not unlawful as violating due process solely because it

upsets otherwise settled expectations even though the effect of the legislation is to impose a new duty or liability based on past acts.⁵

There is no due process right to the continued existence of common-law causes of action,⁶ since while common-law rights of action in tort receive constitutional protection, they are not fundamental rights which demand heightened due process protection; a rational relationship to a legitimate governmental purpose is all that is required to prospectively limit and even to abrogate common-law rights of action in tort.⁷ The legislature is free to make statutory changes in common law rules of liability without running afoul of due process—no one has a vested property interest in a rule of law.⁸ A limitation on a common law measure of recovery does not violate a fundamental right or create a suspect classification for due process purposes,⁹ and a party's disagreement with a legislative policy decision of this nature is not legally relevant under substantive due process.¹⁰ When Congress creates a limitation on liability, as for compliance with federal law, or even completely forecloses relief, as through immunity, it does not violate due process.¹¹ The abolition of a previously created cause of action in tort is subject to a rational relationship analysis for purposes of a due process challenge.¹²

CUMULATIVE SUPPLEMENT

Cases:

Florida statute making the private employer of an off-duty county police officer responsible, through indemnification of county, for officer's acts or omissions while performing services for benefit of employer was supported by legitimate governmental interests, as required for statute to survive rational basis review for due process violation; the public should not bear the cost of police actions for which a private party had contracted, and an off-duty officer working a paid private detail was more likely to find himself in a situation where police action was necessary than was an officer who was not working such a detail. [U.S.C.A. Const.Amend. 14](#); [West's F.S.A. § 30.2905\(2\)\(a\)](#). [Blue Martini Kendall, LLC v. Miami Dade County Florida](#), 816 F.3d 1343 (11th Cir. 2016).

Restitution process ordered by trial court, following Attorney General's enforcement action against for-profit schools under Minnesota Consumer Fraud Act (MCFA), did not violate due process, in case arising out of schools' misrepresentations as to whether obtaining schools' criminal justice degree would qualify students for police officer or probation officer career; process would be overseen by special master, restitution amount was product of number of students who sought a criminal justice degree and the total tuition, fees, and other costs they paid to schools, and schools would retain right to assert before special master that misrepresentations did not cause a prospective student to pursue degree. [U.S. Const. Amend. 14](#); [Minn. Stat. Ann. § 325F.69](#). [State v. Minnesota School of Business, Inc.](#), 935 N.W.2d 124 (Minn. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S.—American Oil Co. v. Environmental Improvement Commission](#), 414 U.S. 1035, 94 S. Ct. 532, 38 L. Ed. 2d 326 (1973).
- 2 [U.S.—Reyes-Mata v. IBP, Inc.](#), 299 F.3d 504 (5th Cir. 2002).
[Conn.—Chamberland v. Physicians for Women's Health, LLC](#), 40 Conn. L. Rptr. 731, 2006 WL 437553 (Conn. Super. Ct. 2006).
- 3 [D.C.—Agomo v. Fenty](#), 916 A.2d 181, 26 A.L.R.6th 767 (D.C. 2007) (referencing [Louis Pizitz Dry Goods Co. v. Yeldell](#), 274 U.S. 112, 47 S. Ct. 509, 71 L. Ed. 952, 51 A.L.R. 1376 (1927)).

Parents' vicarious liability for children

Mich.—*In re McEvoy*, 267 Mich. App. 55, 704 N.W.2d 78, 202 Ed. Law Rep. 778 (2005).

Tex.—*In re D.M.*, 191 S.W.3d 381 (Tex. App. Austin 2006).

U.S.—*Eastern Enterprises v. Apfel*, 524 U.S. 498, 118 S. Ct. 2131, 141 L. Ed. 2d 451 (1998).

U.S.—*Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 96 S. Ct. 2882, 49 L. Ed. 2d 752, 1 Fed. R. Evid. Serv. 243 (1976); *Littlewolf v. Hodel*, 681 F. Supp. 929 (D.D.C. 1988), judgment *aff'd*, 877 F.2d 1058 (D.C. Cir. 1989).

Comparative negligence statutes

Alaska—*Evans ex rel. Kutch v. State*, 56 P.3d 1046 (Alaska 2002).

U.S.—*Dinh v. Rust Intern. Corp.*, 974 F.2d 500 (4th Cir. 1992).

Tenn.—*Mills v. Wong*, 155 S.W.3d 916 (Tenn. 2005).

Tenn.—*Mills v. Wong*, 155 S.W.3d 916 (Tenn. 2005).

U.S.—*Branch v. U.S.*, 69 F.3d 1571 (Fed. Cir. 1995).

U.S.—*Estate of Sisk v. Manzanares*, 270 F. Supp. 2d 1265 (D. Kan. 2003).

Utah—*Tindley v. Salt Lake City School Dist.*, 2005 UT 30, 116 P.3d 295, 200 Ed. Law Rep. 406 (Utah 2005) (holding modified on other grounds by, *Moss v. Pete Suazo Utah Athletic Com'n*, 2007 UT 99, 175 P.3d 1042 (Utah 2007)).

U.S.—*Alexander v. Whitman*, 114 F.3d 1392 (3d Cir. 1997).

U.S.—*Avera v. United Air Lines*, 686 F. Supp. 2d 1262 (N.D. Fla. 2010), *aff'd*, 465 Fed. Appx. 855 (11th Cir. 2012).

U.S.—*In re Air Crash Disaster at Stapleton Intern. Airport, Denver, Colo.*, on Nov. 15, 1987, 720 F. Supp. 1465 (D. Colo. 1989).

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16D C.J.S. Constitutional Law § 2363

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

1. In General

§ 2363. Creation, protection, and enforcement of liens

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4416

Statutes for the creation and enforcement of liens, as temporary or partial impairments to property rights, apply within the constraints of due process of law, protecting both the lienholder and the property owner and requiring a balancing of interests in determining the sufficiency of the process afforded.

Temporary or partial impairments to property rights entailed by liens and similar encumbrances are sufficient to merit due process protection, even though they do not amount to a complete, physical, or permanent deprivation of property,¹ since lien rights constitute property rights of the lienholder that cannot be deprived without due process of law.² Inversely, the lien is like a taking, in that the property owner is deprived of a significant property interest, thus entitling the property owner to due process protection.³ In short, due process protections extend to both parties—the lienholder and the property owner.⁴

State procedures for creating and enforcing attachments, as with liens, are subject to the strictures of due process.⁵ A balancing test is applied in assessing the sufficiency of the process set out by such state statutes, weighing such factors as the private interests implicated, the risk of erroneous deprivation, the probable value of additional safeguards, and the interests of the party

seeking the prejudgment remedy, coupled with the ancillary interest the government may have in providing the procedure or forgoing the added burden of providing greater protections.⁶

Statutes creating liens in cases coming within their terms are frequently sustained against the objection that the statutes violate the guaranty of due process of law,⁷ provided the lien does not permit seizure or possession of the attached property.⁸ A recording statute, as affecting the creation of liens by recording requirements, must meet objective standards to avoid unconstitutional vagueness in violation of due process, and does so by clearly identifying what action is required, when, and by whom, thereby avoiding arbitrary application and enforcement.⁹

The constitutional requirement of due process of law is not infringed by statutes creating liens in favor of those who, by labor or materials, add to the value of property by the owner's consent or authority, express or implied,¹⁰ even though no direct contractual relation exists between the owner of the property and those asserting the lien.¹¹ However, a state "stop notice" statute, permitting subcontractors or materialmen to bind the funds owed to a contractor by the project owner, deprived the contractor of a significant property interest in the right to receive payment without interference, and facially violated due process by authorizing the withholding of earned monies from the contractor for an indefinite period of time without sufficient procedural safeguards.¹²

A statute retroactively impairing a lien as a vested property interest violates due process.¹³ Statutes setting the priorities among competing liens, even according a super priority to certain classes of liens, do not violate the due process rights of lesser priority lienholders whose liens come into being after the enactment and who are thereby afforded notice of priorities by operation of law.¹⁴

Substantive due process.

The protections of substantive due process encompass the property interests of lienholders against government action that is arbitrary, conscience-shocking, or oppressive in a constitutional sense, but do not reach government action that is merely incorrect or ill-advised, as in the failure to follow proper procedures dictated by law or ordinance, even procedures required by procedural due process.¹⁵ To demonstrate a substantive due process violation by the government in relation to property subject to a lawful lien interest, the plaintiff must show an exercise of power without any reasonable justification in the service of a legitimate governmental objective, as motivated by a desire to injure the plaintiff or for some other improper purpose.¹⁶

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Footnotes

- 1 U.S.—*Connecticut v. Doeher*, 501 U.S. 1, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991); *Noatex Corp. v. King Const. of Houston, L.L.C.*, 732 F.3d 479 (5th Cir. 2013); *Daily Services, LLC v. Valentino*, 756 F.3d 893 (6th Cir. 2014).
Temporary prejudgment garnishment and attachment
Ind.—*Squibb v. State ex rel. Davis*, 860 N.E.2d 904 (Ind. Ct. App. 2007).
- 2 U.S.—*U.S. v. Ritchie Special Credit Investments, Ltd.*, 620 F.3d 824 (8th Cir. 2010); *Money Market Pawn, Inc. v. Wirth*, 32 F. Supp. 3d 903 (N.D. Ill. 2014); *Oewen Loan Servicing, LLC v. Gonzalez Financial Holdings, Inc.*, 2015 WL 224972 (S.D. Tex. 2015).
Mo.—*Collector of Revenue by and through the Director of Collections for Jackson County v. Parcels of Land Encumbered with Delinquent Land Tax Liens*, 453 S.W.3d 746 (Mo. 2015).
Nev.—*J.D. Construction v. IBEX Int'l Group*, 240 P.3d 1033, 126 Nev. Adv. Op. No. 36 (Nev. 2010).
Okla.—*Bank of Oklahoma v. Ashley*, 2009 OK CIV APP 50, 212 P.3d 507 (Div. 4 2009).
R.I.—*Gem Plumbing & Heating Co., Inc. v. Rossi*, 867 A.2d 796 (R.I. 2005).

Tex.—Security State Bank & Trust v. Bexar County, 397 S.W.3d 715 (Tex. App. San Antonio 2012).

Mortgagee as lienholder

U.S.—First Nat. Acceptance Co. v. City of Utica, N.Y., 26 F. Supp. 3d 185 (N.D. N.Y. 2014).

U.S.—Benistar Admin Services, Inc. v. U.S., 758 F. Supp. 2d 95 (D. Conn. 2010).

Nev.—J.D. Construction v. IBEX Int'l Group, 240 P.3d 1033, 126 Nev. Adv. Op. No. 36 (Nev. 2010).

Nev.—J.D. Construction v. IBEX Int'l Group, 240 P.3d 1033, 126 Nev. Adv. Op. No. 36 (Nev. 2010).

U.S.—Connecticut v. Doebr, 501 U.S. 1, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991); Noatex Corp. v. King Const. of Houston, L.L.C., 732 F.3d 479 (5th Cir. 2013).

U.S.—Connecticut v. Doebr, 501 U.S. 1, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991); Noatex Corp. v. King Const. of Houston, L.L.C., 732 F.3d 479 (5th Cir. 2013); Benistar Admin Services, Inc. v. U.S., 758 F. Supp. 2d 95 (D. Conn. 2010).

Nev.—J.D. Construction v. IBEX Int'l Group, 240 P.3d 1033, 126 Nev. Adv. Op. No. 36 (Nev. 2010).

R.I.—Gem Plumbing & Heating Co., Inc. v. Rossi, 867 A.2d 796 (R.I. 2005).

U.S.—City of Fort Lauderdale v. Scott, 551 Fed. Appx. 972 (11th Cir. 2014).

Md.—Rhoads v. Sommer, 401 Md. 131, 931 A.2d 508 (2007).

Attorney's fees lien on client's property

Md.—Sommer v. Rhoads, 171 Md. App. 392, 910 A.2d 514 (2006), judgment aff'd and remanded, 401 Md. 131, 931 A.2d 508 (2007).

Wash.—Krein v. Nordstrom, 80 Wash. App. 306, 908 P.2d 889 (Div. 1 1995).

Md.—Sommer v. Rhoads, 171 Md. App. 392, 910 A.2d 514 (2006), judgment aff'd and remanded, 401 Md. 131, 931 A.2d 508 (2007).

U.S.—Montgomery County, Pa. v. MERSCORP, Inc., 16 F. Supp. 3d 535 (E.D. Pa. 2014).

U.S.—In re Thomas A. Cary, Inc., 412 F. Supp. 667 (E.D. Va. 1976), aff'd, 562 F.2d 47 (4th Cir. 1977) and aff'd, 562 F.2d 48 (4th Cir. 1977).

Ark.—Bruce-Rogers Supply Co. v. Petty Plumbing, Inc., 270 Ark. 63, 603 S.W.2d 445 (Ct. App. 1980).

Colo.—Weather Engineering & Mfg., Inc. v. Pinon Springs Condominiums, Inc., 192 Colo. 495, 563 P.2d 346 (1977).

U.S.—Dunbar v. City of New York, 251 U.S. 516, 40 S. Ct. 250, 64 L. Ed. 384 (1920).

U.S.—Noatex Corp. v. King Const. of Houston, L.L.C., 732 F.3d 479 (5th Cir. 2013).

Okla.—Bank of Oklahoma v. Ashley, 2009 OK CIV APP 50, 212 P.3d 507 (Div. 4 2009).

U.S.—7912 Limbwood Court Trust v. Wells Fargo Bank, N.A., 979 F. Supp. 2d 1142 (D. Nev. 2013).

U.S.—First Nat. Acceptance Co. v. City of Utica, N.Y., 26 F. Supp. 3d 185 (N.D. N.Y. 2014).

Denial of lien priority not arbitrary or unreasonable

Haw.—Lopez v. State, 133 Haw. 311, 328 P.3d 320 (2014).

U.S.—First Nat. Acceptance Co. v. City of Utica, N.Y., 26 F. Supp. 3d 185 (N.D. N.Y. 2014).

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16D C.J.S. Constitutional Law § 2364

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XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

1. In General

§ 2364. Creation, protection, and enforcement of liens—Notice and hearing

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4416, 4417

Due process requires that before the state may deprive a property owner or a lienholder of a significant property interest, the property owner or lienholder must be given notice and an opportunity to be heard.

Due process requires that before a state may deprive a property owner of a significant property interest in aid of creditor or lienholder, the property owner must be given notice,¹ demanding strict compliance with notice requirements,² and an opportunity to be heard,³ or there must be a showing of exigent circumstances, a rationale for the action, and narrow tailoring to the circumstances.⁴ When the facts and circumstances indicate that the owner of the property has actual notice or actual knowledge of an enforcement procedure, the foreclosure of the lien does not violate due process for lack of notice.⁵

Due process also requires that the lienholder receive notice of a sale of the subject property,⁶ meaning a reasonable effort to provide actual notice,⁷ extending also to notice of the seizure,⁸ freezing of assets for receivership,⁹ destruction of the subject property,¹⁰ and the prioritization of competing liens.¹¹ A prospective lienholder must receive notice and an opportunity to be heard regarding the enforcement or satisfaction of a prior competing lien.¹² While due process protections available for a

lienholder's interest apply regardless of the ultimate outcome of a hearing on the final entitlement to the property, a claim for due process violations of a lienholder's interest must establish the inadequacy or unfairness of postdeprivation remedies available to the lienholder.¹³ A temporary suspension of lien enforcement, in accordance with bankruptcy procedure, is not a breach of the lienholder's property interest.¹⁴ Exigent circumstances may constitute an excuse for the failure to observe procedural due process in providing notice and an opportunity to be heard to a lienholder, but a substantial delay defeats the excuse.¹⁵

Summary process to expunge a lien, requiring the court to resolve factual issues regarding the completion of construction under contracts based on supporting documents and affidavits, is not a violation of due process when both the property owner and the contractor are provided notice and the opportunity to present their case.¹⁶ In the absence of factual issues, proceedings to expunge a patently fraudulent lien do not require a hearing.¹⁷

Filing of lien.

A statute authorizing the filing of a mechanic's lien provides adequate due process procedural safeguards by requiring a notice of intention to file, together with postdeprivation remedies, despite the lack of a requirement to show extraordinary circumstances for the lien and the absence of judicial review of the notice of intention.¹⁸ However, statutory authorization for filing a lien against property without prior notice of the filing or a hearing on the filing is permissible under due process because the statute itself constitutes notice of the consequences of particular acts incurring debt¹⁹ and because procedural safeguards are afforded on enforcement of the lien.²⁰ The filing and service of a mechanic's lien is unlike the service of process in a civil action and does not bear on the property owner's due process rights because, on receipt, a property owner need not take any action or appear in any forum; it is not a proceeding to enforce the lien but only to preserve and continue it.²¹

CUMULATIVE SUPPLEMENT

Cases:

Lienholder was not deprived of its procedural due process rights, when, at all times throughout lender's successor in interest's foreclosure action, lienholder had a full and fair opportunity to protect its interest in the mortgaged property, its claim of a superior property interest was heard both on summary judgment and then on reconsideration, and its claim of superior interest as against another lienholder was heard at trial. [U.S. Const. Amend. 14](#). [Union Bank, N.A. v. JV L.L.C.](#), 413 P.3d 407 (Idaho 2017).

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Footnotes

- 1 [U.S.—Noatex Corp. v. King Const. of Houston, L.L.C.](#), 732 F.3d 479 (5th Cir. 2013); [Singh v. City of Oakland, Cal.](#), 295 Fed. Appx. 118 (9th Cir. 2008); [City of Fort Lauderdale v. Scott](#), 551 Fed. Appx. 972 (11th Cir. 2014).
[D.C.—Comer v. Wells Fargo Bank, N.A.](#), 108 A.3d 364 (D.C. 2015).
[Fla.—U.S. Bank Nat. Ass'n v. Proenza](#), 157 So. 3d 1075 (Fla. 3d DCA 2015).
[Mo.—Conseco Finance Servicing Corp. v. Missouri Dept. of Revenue](#), 195 S.W.3d 410 (Mo. 2006).
[Nev.—J.D. Construction v. IBEX Int'l Group](#), 240 P.3d 1033, 126 Nev. Adv. Op. No. 36 (Nev. 2010).
[R.I.—Gem Plumbing & Heating Co., Inc. v. Rossi](#), 867 A.2d 796 (R.I. 2005).
Rationally calculated to apprise

U.S.—Ocwen Loan Servicing, LLC v. Gonzalez Financial Holdings, Inc., 2015 WL 224972 (S.D. Tex. 2015).

Supplier not interested party entitled to notice

Md.—Redland Genstar, Inc. v. Mahase, 155 Md. App. 72, 841 A.2d 413 (2004).

D.C.—Comer v. Wells Fargo Bank, N.A., 108 A.3d 364 (D.C. 2015).

Timely mailed notice of nonjudicial foreclosure

U.S.—Davenport v. Litton Loan Servicing, LP, 725 F. Supp. 2d 862 (N.D. Cal. 2010) (applying California law).

Renotice of pending nonjudicial foreclosure not required

Alaska—Farmer v. Alaska USA Title Agency, Inc., 336 P.3d 160 (Alaska 2014).

Failure to due diligence to locate

Ind.—Hair v. Deutsche Bank Nat. Trust Co., 18 N.E.3d 1019 (Ind. Ct. App. 2014).

U.S.—Noatex Corp. v. King Const. of Houston, L.L.C., 732 F.3d 479 (5th Cir. 2013); Singh v. City of Oakland, Cal., 295 Fed. Appx. 118 (9th Cir. 2008); City of Fort Lauderdale v. Scott, 551 Fed. Appx. 972 (11th Cir. 2014).

D.C.—Comer v. Wells Fargo Bank, N.A., 108 A.3d 364 (D.C. 2015).

Mo.—Conseco Finance Servicing Corp. v. Missouri Dept. of Revenue, 195 S.W.3d 410 (Mo. 2006).

Nev.—J.D. Construction v. IBEX Int'l Group, 240 P.3d 1033, 126 Nev. Adv. Op. No. 36 (Nev. 2010).

R.I.—Gem Plumbing & Heating Co., Inc. v. Rossi, 867 A.2d 796 (R.I. 2005).

Necessary parties with real property interest

Va.—Synchronized Const. Services, Inc. v. Prav Lodging, L.L.C., 764 S.E.2d 61 (Va. 2014).

Telephonic hearing

Wyo.—Teton Builders v. Jacobsen Const. Co. ex rel. FS Jackson Hole Development Co., LLC, 2004 WY 147, 100 P.3d 1260 (Wyo. 2004).

U.S.—Noatex Corp. v. King Const. of Houston, L.L.C., 732 F.3d 479 (5th Cir. 2013).

Alaska—Farmer v. Alaska USA Title Agency, Inc., 336 P.3d 160 (Alaska 2014).

Ohio—Huntington Natl. Bank v. Motel 4 BAPS, Inc., 191 Ohio App. 3d 90, 2010-Ohio-5792, 944 N.E.2d 1210 (8th Dist. Cuyahoga County 2010).

U.S.—Ocwen Loan Servicing, LLC v. Gonzalez Financial Holdings, Inc., 2015 WL 224972 (S.D. Tex. 2015).

Mo.—Collector of Revenue by and through the Director of Collections for Jackson County v. Parcels of Land Encumbered with Delinquent Land Tax Liens, 453 S.W.3d 746 (Mo. 2015).

Tex.—Lyda Swinerton Builders, Inc. v. Cathay Bank, 409 S.W.3d 221 (Tex. App. Houston 14th Dist. 2013), review denied, (Oct. 3, 2014).

Internet notice procedure insufficient

Ohio—PHH Mtge. Corp. v. Prater, 133 Ohio St. 3d 91, 2012-Ohio-3931, 975 N.E.2d 1008 (2012).

U.S.—Ocwen Loan Servicing, LLC v. Gonzalez Financial Holdings, Inc., 2015 WL 224972 (S.D. Tex. 2015).

Mo.—Collector of Revenue by and through the Director of Collections for Jackson County v. Parcels of Land Encumbered with Delinquent Land Tax Liens, 453 S.W.3d 746 (Mo. 2015).

U.S.—Money Market Pawn, Inc. v. Wirth, 32 F. Supp. 3d 903 (N.D. Ill. 2014).

Mo.—Conseco Finance Servicing Corp. v. Missouri Dept. of Revenue, 195 S.W.3d 410 (Mo. 2006).

U.S.—U.S. v. Ritchie Special Credit Investments, Ltd., 620 F.3d 824 (8th Cir. 2010).

U.S.—First Nat. Acceptance Co. v. City of Utica, N.Y., 26 F. Supp. 3d 185 (N.D. N.Y. 2014).

Ohio—Huntington Natl. Bank v. 5777 Grant, L.L.C., 2014-Ohio-5154, 24 N.E.3d 609 (Ohio Ct. App. 8th Dist. Cuyahoga County 2014).

Haw.—Lopez v. State, 133 Haw. 311, 328 P.3d 320 (2014).

U.S.—Money Market Pawn, Inc. v. Wirth, 32 F. Supp. 3d 903 (N.D. Ill. 2014).

U.S.—U.S. v. Ritchie Special Credit Investments, Ltd., 620 F.3d 824 (8th Cir. 2010).

U.S.—First Nat. Acceptance Co. v. City of Utica, N.Y., 26 F. Supp. 3d 185 (N.D. N.Y. 2014).

Nev.—J.D. Construction v. IBEX Int'l Group, 240 P.3d 1033, 126 Nev. Adv. Op. No. 36 (Nev. 2010).

Pa.—Gruff v. Department of State, 913 A.2d 1008 (Pa. Commw. Ct. 2006).

R.I.—Gem Plumbing & Heating Co., Inc. v. Rossi, 867 A.2d 796 (R.I. 2005).

- 19 U.S.—[In re Johnson](#), 386 B.R. 272 (Bankr. D. Idaho 2008).
Md.—[Rhoads v. Sommer](#), 401 Md. 131, 931 A.2d 508 (2007).
20 Md.—[Rhoads v. Sommer](#), 401 Md. 131, 931 A.2d 508 (2007).
21 Minn.—[Eclipse Architectural Group, Inc. v. Lam](#), 814 N.W.2d 692 (Minn. 2012).

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16D C.J.S. Constitutional Law § 2365

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Constitutional Law

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P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

1. In General

§ 2365. Liability for injuries to property rights

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4425

The requirements of due process apply to statutes imposing liability on those who cause injury to the property of others.

The requirements of due process apply to statutes imposing liability on those who cause injury to the property of others, including substantive due process, precluding conscience-shocking conduct,¹ and requiring procedural due process.²

For procedural due process purposes, states generally must afford property owners prior notice and an opportunity to be heard before depriving them of their property.³ Once the required predeprivation standards are met, and a decision is rendered authorizing state action pursuant to that process, due process does not mandate an additional requirement of a compliance opportunity to permit a cure of an objectionable condition to which state action is targeted.⁴

When the state must act quickly, or where it would be impractical to provide predeprivation process, postdeprivation process satisfies requirements of due process.⁵ When the deprivation at issue is product of a state official's violation of authority by negligent conduct, or a violation of established rules, predeprivation process is deemed impossible for procedural due process purposes, and the availability of statutory postdeprivation hearings or tort remedies satisfies procedural due process.⁶

For intentional deprivations of property by the state, the state must provide a suitable postdeprivation remedy to meet the requirements of due process.⁷ A state tort claims act that provides judicial review as a method by which a person can seek reimbursement for the negligent loss or intentional deprivation of property meets the requirements of the Due Process Clause by providing postdeprivation due process of law.⁸ A statutory right of action for inverse condemnation also constitutes an adequate postdeprivation tort remedy for a state's allegedly wrongful deprivation of private property.⁹

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Footnotes

- 1 U.S.—*Ferran v. Town of Grafton*, 979 F. Supp. 944 (N.D. N.Y. 1997).
 Mich.—*Mettler Walloon, L.L.C. v. Melrose Tp.*, 281 Mich. App. 184, 761 N.W.2d 293 (2008).
 N.J.—*Plemmons v. Blue Chip Ins. Services, Inc.*, 387 N.J. Super. 551, 904 A.2d 825 (App. Div. 2006).
 Tex.—*Lee v. City of Houston*, 2006 WL 2254401 (Tex. App. Houston 14th Dist. 2006).
- 2 U.S.—*Brown v. Muhlenberg Tp.*, 269 F.3d 205 (3d Cir. 2001); *Costas-Elena v. Municipality of San Juan*, 714 F. Supp. 2d 263 (D.P.R. 2010).
 La.—*Hamilton v. Royal Intern. Petroleum Corp.*, 934 So. 2d 25 (La. 2006).
 Minn.—*Krongard v. City of Minneapolis*, 2008 WL 1748169 (Minn. Ct. App. 2008).
 Tex.—*Wilson v. TDCJ-ID*, 268 S.W.3d 756 (Tex. App. Waco 2008).
Subject to utility permit
 Notice and hearing due process requirements for the Army Corps of Engineers removal or alteration of a utility pipeline are subject to the exculpatory clause of the utility's government permit, enforceable without a hearing or notice.
 U.S.—*Columbia Gulf Transmission Co. v. U.S.*, 966 F. Supp. 1453 (S.D. Miss. 1997).
- 3 U.S.—*Costas-Elena v. Municipality of San Juan*, 714 F. Supp. 2d 263 (D.P.R. 2010).
 Cal.—*Calvert v. County of Yuba*, 145 Cal. App. 4th 613, 51 Cal. Rptr. 3d 797 (3d Dist. 2006), as modified on other grounds, (Jan. 3, 2007).
Notice and hearing opportunity provided for sale
 Kan.—*Unified Government of Wyandotte County v. GHA Real Estate*, 191 P.3d 363 (Kan. Ct. App. 2008), unpublished.
Notice and hearing opportunity provided for nuisance
 Minn.—*Krongard v. City of Minneapolis*, 2008 WL 1748169 (Minn. Ct. App. 2008).
- 4 Minn.—*Krongard v. City of Minneapolis*, 2008 WL 1748169 (Minn. Ct. App. 2008).
- 5 U.S.—*Costas-Elena v. Municipality of San Juan*, 714 F. Supp. 2d 263 (D.P.R. 2010).
- 6 U.S.—*Brown v. Muhlenberg Tp.*, 269 F.3d 205 (3d Cir. 2001); *Costas-Elena v. Municipality of San Juan*, 714 F. Supp. 2d 263 (D.P.R. 2010).
- 7 U.S.—*Hudson v. Palmer*, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984).
- 8 U.S.—*Brown v. Muhlenberg Tp.*, 269 F.3d 205 (3d Cir. 2001); *Shidler v. Moore*, 409 F. Supp. 2d 1060 (N.D. Ind. 2006).
- 9 Va.—*Lee v. City of Norfolk*, 281 Va. 423, 706 S.E.2d 330 (2011).

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1. In General

§ 2366. Liability of property owner for acts of another

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4410 to 4424

States may impose liability on property owners for acts of others who use the owners' property and cause injury to third persons, provided the statutes meet due process standards for a rational basis, as reasonably related to a legitimate state purpose, and are not vague.

As an owner of property may, under the police power, be absolutely prohibited from allowing the property to be used in a manner harmful to the public comfort and health, the State may, consistent with due process, prescribe reasonable conditions on the owner in permitting the use of the property for such purposes.¹ The test of validity is one for a rational basis² and a legitimate legislative goal.³ Statutory terms used in provisions of this nature must meet a test of reasonable specificity to avoid vagueness in violation of due process.⁴ The presence of some ambiguity or vagueness in a burden-shifting provision, even if not sufficient to invalidate the provision under due process standards, may warrant a predeprivation hearing to address a substantial risk of government error in the application to an individual.⁵

States may shift the burden of liability for injuries to persons from sidewalk defects from the city to the owners of abutting property, requiring the owners to maintain the walks and maintain liability insurance coverage for the failure to do so, without

implicating due process concerns, when the enactment bears a reasonable connection to public health, safety, and welfare.⁶ A statutory scheme governing the liability of a property owner for damages to another by the action of negligent and intentional tortfeasors and criminal assailants on the property is not in violation of due process when supported by a rational basis.⁷

A statute may impose absolute liability on airplane owners for damage caused by their planes to persons and property on the ground, even as applied to the owner of a stolen airplane, since the statute serves the legitimate purpose of shifting the loss caused by airplane crashes from innocent victims on the ground to the owner of the plane and does not constitute an unconstitutional deprivation of property without due process.⁸

Statutes making the owner of a motor vehicle liable for the negligence of the operator using the vehicle with the permission of the owner do not inherently violate the due process guaranty,⁹ particularly as applied to family member operators.¹⁰ A law can rationally impose automatic prima facie liability on the registered owner of a motor vehicle, without evidence that the owner was not the operator the vehicle, based on the asserted government interest in public safety.¹¹

A statute governing the vicarious liability of motor vehicle rental companies is not in violation of due process when it meets a rational basis standard.¹² A statute imposing vicarious liability on the owner-lessor of trucks for damage caused by a lessee-operator is not a due process violation when it rests on a rational basis and a legitimate interest in highway safety and financial responsibility toward innocent victims.¹³

Liquor and gambling.

A person leasing property for the sale of intoxicating liquor may be made directly liable for all injuries caused by such sales¹⁴ or may be held secondarily responsible for damages assessed against the occupant because of such traffic.¹⁵ The same rule applies to an owner of a building who knowingly permits it to be used for gaming purposes.¹⁶

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Footnotes

- 1 U.S.—*Eiger v. Garrity*, 246 U.S. 97, 38 S. Ct. 298, 62 L. Ed. 596 (1918).
- 2 Fla.—*Vargas v. Enterprise Leasing Co.*, 993 So. 2d 614 (Fla. 4th DCA 2008), decision approved, 60 So. 3d 1037 (Fla. 2011).
Ga.—*Couch v. Red Roof Inns, Inc.*, 291 Ga. 359, 729 S.E.2d 378 (2012).
Iowa—*City of Sioux City v. Jacobsma*, 2015 WL 711071 (Iowa 2015).
N.Y.—*Gangemi v. City of New York*, 13 Misc. 3d 1112, 827 N.Y.S.2d 498 (Sup 2006).
Wis.—*Mikaelian v. Woyak*, 121 Wis. 2d 581, 360 N.W.2d 706 (Ct. App. 1984).
Reasonable relationship to interests
Mich.—*Phillips v. Mirac, Inc.*, 470 Mich. 415, 685 N.W.2d 174 (2004).
Reasonable basis for imposing vicarious liability
N.Y.—*Chilberg v. Chilberg*, 13 A.D.3d 1089, 788 N.Y.S.2d 533 (4th Dep't 2004).
- 3 Fla.—*Sontay v. Avis Rent-A-Car Systems, Inc.*, 872 So. 2d 316 (Fla. 4th DCA 2004).
Mich.—*Phillips v. Mirac, Inc.*, 470 Mich. 415, 685 N.W.2d 174 (2004).
N.J.—*Torchia v. Fisher*, 95 N.J. 43, 468 A.2d 1061 (1983).
N.Y.—*Chilberg v. Chilberg*, 13 A.D.3d 1089, 788 N.Y.S.2d 533 (4th Dep't 2004).
Recreational property exemption as legitimate goal
Idaho—*Corey v. State*, 108 Idaho 921, 703 P.2d 685 (1985).
- 4 Neb.—*Dykes v. Scotts Bluff County Agr. Soc., Inc.*, 260 Neb. 375, 617 N.W.2d 817 (2000).
Wis.—*Mikaelian v. Woyak*, 121 Wis. 2d 581, 360 N.W.2d 706 (Ct. App. 1984).
Words of common understanding to normal intelligence

- 5 Neb.—[Bridgeford v. U-Haul Co.](#), 195 Neb. 308, 238 N.W.2d 443 (1976).
 6 U.S.—[Luedeke v. Village of New Paltz](#), 63 F. Supp. 2d 215 (N.D. N.Y. 1999).
 7 N.Y.—[Gangemi v. City of New York](#), 13 Misc. 3d 1112, 827 N.Y.S.2d 498 (Sup 2006).
 8 Ga.—[Couch v. Red Roof Inns, Inc.](#), 291 Ga. 359, 729 S.E.2d 378 (2012).
 N.J.—[Torchia v. Fisher](#), 95 N.J. 43, 468 A.2d 1061 (1983).
Reasonable relation to public welfare
 U.S.—[Prentiss v. National Airlines](#), 112 F. Supp. 306 (D.N.J. 1953).
 9 Nev.—[Arata v. Faubion](#), 123 Nev. 153, 161 P.3d 244 (2007).
 N.Y.—[Chilberg v. Chilberg](#), 13 A.D.3d 1089, 788 N.Y.S.2d 533 (4th Dep't 2004).
As to nonresident owner
 U.S.—[Young v. Masci](#), 289 U.S. 253, 53 S. Ct. 599, 77 L. Ed. 1158, 88 A.L.R. 170 (1933).
 10 Nev.—[Arata v. Faubion](#), 123 Nev. 153, 161 P.3d 244 (2007).
Parental sponsorship of child
 Wis.—[Mikaelian v. Woyak](#), 121 Wis. 2d 581, 360 N.W.2d 706 (Ct. App. 1984).
 11 Iowa—[City of Sioux City v. Jacobsma](#), 2015 WL 711071 (Iowa 2015).
Vicarious liability of owner
 N.M.—[Titus v. City of Albuquerque](#), 149 N.M. 556, 2011-NMCA-038, 252 P.3d 780 (Ct. App. 2011).
 N.Y.—[Krieger v. City of Rochester](#), 42 Misc. 3d 753, 978 N.Y.S.2d 588 (Sup 2013).
 12 U.S.—[Budget Rent-A-Car System, Inc. v. Chappell](#), 407 F.3d 166 (3d Cir. 2005).
 Fla.—[Vargas v. Enterprise Leasing Co.](#), 993 So. 2d 614 (Fla. 4th DCA 2008), decision approved, 60 So. 3d 1037 (Fla. 2011).
Damage cap applicable to short term lessors
 Fla.—[Sontay v. Avis Rent-A-Car Systems, Inc.](#), 872 So. 2d 316 (Fla. 4th DCA 2004).
 Mich.—[Phillips v. Mirac, Inc.](#), 470 Mich. 415, 685 N.W.2d 174 (2004).
 13 Neb.—[Bridgeford v. U-Haul Co.](#), 195 Neb. 308, 238 N.W.2d 443 (1976).
 14 U.S.—[Eiger v. Garrity](#), 246 U.S. 97, 38 S. Ct. 298, 62 L. Ed. 596 (1918).
 15 Ohio—[Dugan v. Neville](#), 49 Ohio St. 462, 31 N.E. 1080 (1892).
 16 U.S.—[Marvin v. Trout](#), 199 U.S. 212, 26 S. Ct. 31, 50 L. Ed. 157 (1905).

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1. In General

§ 2367. Liability for acts or omissions of employee

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4410 to 4412

Imposing liability on an employer for wrongful acts of employees does not violate due process even though permitting recovery of punitive or exemplary damages.

Imposing liability on an employer for wrongful acts of employees does not violate due process of law when rationally based.¹ Imposing exemplary damages on an employer when its employee commits intentional fraud creates a strong incentive for vigilance by those in a position to guard substantially against evil to be prevented and rationally advances the state's goal in deterring fraud in a manner consistent with Due Process Clause.²

The State may enlarge the liability of an employer for the negligence of an employee in a specified context when the employer is not obliged to select a particular individual as an employee nor to retain a selected individual whom the employer finds is incompetent.³

That a verdict in favor of a third party against an employer for the acts of an employee is substantially higher than other verdicts in similar cases is not in itself a due process violation predicated on a lack of notice of the possibility of a higher verdict, given the variability among verdicts based on the evidence in particular cases.⁴

A statute may permit an indemnification action against an employer to recover the costs of defending an action brought by the employer's employees in the context of the employer's work for the plaintiff and based on the employer's failure to warn its employees of certain dangers in the work since the statute bears a rational relationship to the legislative purpose of preventing injuries to persons in that context and thus is not a due process violation.⁵

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Footnotes

- 1 U.S.—[Pacific Mut. Life Ins. Co. v. Haslip](#), 499 U.S. 1, 111 S. Ct. 1032, 113 L. Ed. 2d 1 (1991).
- 2 U.S.—[Pacific Mut. Life Ins. Co. v. Haslip](#), 499 U.S. 1, 111 S. Ct. 1032, 113 L. Ed. 2d 1 (1991).
Exemplary and punitive damages permitted
U.S.—[Louis Pizitz Dry Goods Co. v. Yeldell](#), 274 U.S. 112, 47 S. Ct. 509, 71 L. Ed. 952, 51 A.L.R. 1376 (1927).
- 3 U.S.—[Wilmington Star Mining Co. v. Fulton](#), 205 U.S. 60, 27 S. Ct. 412, 51 L. Ed. 708 (1907).
- 4 Ind.—[Ritter v. Stanton](#), 745 N.E.2d 828 (Ind. Ct. App. 2001).
- 5 Ga.—[Glass Systems, Inc. v. Georgia Power Co.](#), 288 Ga. 85, 703 S.E.2d 605 (2010).

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1. In General

§ 2368. Liability for support of persons in public or institutional care or custody

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4414

Due process considerations apply to the obligation and enforcement of support for persons in public or institutional care or custody.

The sufficiency of a requirement for parents to pay for or reimburse the state for the expenses incident to the care or custody of their child as a juvenile offender, within the constraints of due process, depends on the availability of prior notice and an opportunity to be heard, but is otherwise not a due process violation in itself,¹ even as applied to the parents of a committed juvenile after the juvenile reaches the age of 18.² The requirement may not, however, extend to the payment of fees for the cost of the juvenile's detention at home, which violates substantive due process insofar as the State incurs no expense in that setting so that the payment does not bear a rational relationship to the legislative purpose of easing state's financial burden; the requirement is arbitrary and oppressive because a parent of juvenile placed in home detention expends more than parent of juvenile detained in state custody.³

A statute permitting the assessment and collection of maintenance fees from the parents of delinquent children committed to state custody does not facially violate due process because it merely codifies the parents' preexisting duty to support their

children, but due process does require an administrative hearing on the question of reducing or waiving fees.⁴ Parents may be assessed, within the confines of due process, the costs of their child's temporary shelter care by a state family services agency when the parents waive their right to a hearing on the question of shelter care.⁵ A requirement to contribute toward the court ordered costs of a juvenile's drug and alcohol screening and counseling requires that the parent be given an opportunity to be heard before the juvenile court and a limitation of any payment to an amount commensurate with the parent's ability to pay.⁶

Due process is not denied by a requirement that parent reimburse the county for past public support of the parent's child, based on a failure to provide notice and a hearing before the public benefits are furnished, since due process is satisfied by the hearing on the county's suit for reimbursement, at which the parent can establish either that no duty of support was owing or that the funds expended by county were not used for the benefit of the children.⁷ Due process is not violated by a statute allowing the State to seek reimbursement from the parents of children receiving state aid for amount in excess of the state's payments since the State is justified in seeking reimbursement of the excess amount to ensure adequate support for the child's needs and to reimburse, to extent possible, a custodial parent who provides for the child.⁸

The State may, without violating due process, subject the assets of the estate of a mental incompetent to payment for care at a state institution,⁹ and it is not a violation of due process for the law to attach an enforceable obligation on the assets of an inmate committed to a mental institution after being adjudged incompetent to stand trial.¹⁰ However, due process precludes the application of a statute requiring the relatives of mentally disabled persons admitted to public institutions to reimburse the state for the cost of the disabled persons' care.¹¹

A statute which permits recovery of public assistance from the estate of a deceased recipient violates due process insofar as it permits recovery of amounts paid prior to the effective date of the statute.¹²

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Footnotes

- 1 Colo.—*People ex rel. N.D.S.*, 5 P.3d 382 (Colo. App. 2000).
 Fla.—*Dupes v. State, Dept. of Health & Rehabilitative Services*, 536 So. 2d 311 (Fla. 1st DCA 1988).
 Mich.—*In re Juvenile Commitment Costs*, 240 Mich. App. 420, 613 N.W.2d 348 (2000).
Does not require responsibility for conduct
 Wis.—*Matter of K.C.*, 142 Wis. 2d 906, 420 N.W.2d 37 (1988).
- 2 Mich.—*In re Juvenile Commitment Costs*, 240 Mich. App. 420, 613 N.W.2d 348 (2000).
- 3 Fla.—*B.S. v. State*, 862 So. 2d 15 (Fla. 2d DCA 2003).
- 4 Fla.—*Dupes v. State, Dept. of Health & Rehabilitative Services*, 536 So. 2d 311 (Fla. 1st DCA 1988).
- 5 Ill.—*People ex rel. Dept. of Children and Family Services v. Cathey*, 303 Ill. App. 3d 287, 236 Ill. Dec. 822, 708 N.E.2d 408 (5th Dist. 1999).
- 6 La.—*In Interest of J.L.H.*, 699 So. 2d 1165 (La. Ct. App. 2d Cir. 1997).
- 7 Ariz.—*County of San Diego v. Green*, 167 Ariz. 624, 810 P.2d 622 (Ct. App. Div. 2 1991).
- 8 Cal.—*State of Ohio v. Barron*, 52 Cal. App. 4th 62, 60 Cal. Rptr. 2d 342 (5th Dist. 1997).
- 9 Colo.—*Wigington v. State Home and Training School*, 175 Colo. 159, 486 P.2d 417 (1971).
- 10 Conn.—*State v. Kosiorek*, 5 Conn. Cir. Ct. 542, 259 A.2d 151 (App. Div. 1969).
- 11 Mich.—*Miller v. State, Dept. of Revenue*, 18 Mich. App. 145, 171 N.W.2d 3 (1969), judgment aff'd, 385 Mich. 296, 188 N.W.2d 795 (1971).
- 12 Wis.—*In re Peterson's Estate*, 66 Wis. 2d 535, 225 N.W.2d 644 (1975).

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

1. In General

§ 2369. Liability for child support, spousal support, or alimony

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4387, 4396, 4414

Due process considerations apply to the obligation and enforcement of parent's support for their children or of a parent's payment of spousal support or alimony.

Due process considerations apply to the obligation and enforcement of parents' support for their children, requiring adequate procedural safeguards, and particularly notice and an opportunity to be heard.¹ Proceedings affecting a parent's obligations for child support, alimony, and spousal support require due process safeguards of notice and an opportunity to be heard.² The procedures afforded under provisions of the Uniform Interstate Family Support Act regarding foreign support orders generally are consistent with due process.³

A party's voluntary absence from proceedings, duly noticed and scheduled, is not a denial of due process for purposes of the entry of support awards,⁴ nor is a party's default in appearance a denial of due process for purposes of a support modification order, and a default, without more, does not warrant setting aside the modification.⁵

The court may not act in a manner inconsistent with due process by modifying support obligations in the absence of a petition or at least an oral request to do so.⁶ The entry of a modification order on child support and alimony on the motion of the former husband, following a hearing for the former husband's contempt of the court's prior dissolution order and without notice that the former husband's motion would then be considered, violated the former wife's due process rights.⁷

A statutory exclusion of domestic relations matters from the class of cases subject to mandatory appeal from family court does not violate a family court litigant's due process rights in child support litigation when ample opportunity for litigation is afforded.⁸

Due process does not automatically require the appointment of counsel for an indigent parent facing civil contempt and incarceration for the failure to comply with child support orders, particularly when the opposing parent or other custodian to whom support funds are owed is not represented by counsel, but the State must provide alternative procedural safeguards equivalent to adequate notice of the importance of the ability to pay and a fair opportunity to present and to dispute relevant information and court findings.⁹

Due process does not require the appointment, at public expense, of experts as witnesses for a hearing on a parent's ability to pay alimony and child support, following the parent's failure to pay and consequent potential for incarceration, when trial testimony by the obligated parent was sufficient to supply the information needed for a determination.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Modification of timesharing agreement without giving the ex-husband a meaningful opportunity to be heard violated the ex-husband's right to due process of law on ex-wife's emergency motion to modify the timesharing agreement, where the trial court did not permit the ex-husband, who appeared pro se, to finish his cross-examination of ex-wife, testify, or present evidence, and the alleged emergency before the trial court, which was contested by the ex-husband, was that the parties' minor child would face a longer commute to school and might be forced to take public transit. [U.S. Const. Amend. 14](#). [Munoz v. Salgado](#), 253 So. 3d 87 (Fla. 3d DCA 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[Turner v. Rogers](#), 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).
- 2 Alaska—[Blaufuss v. Ball](#), 305 P.3d 281 (Alaska 2013).
Fla.—[Walker v. Walker](#), 80 So. 3d 1128 (Fla. 4th DCA 2012).
La.—[Domingue v. Bodin](#), 996 So. 2d 654 (La. Ct. App. 3d Cir. 2008).
Vt.—[OCS/Glenn Pappas v. O'Brien](#), 193 Vt. 340, 2013 VT 11, 67 A.3d 916 (2013).
Va.—[Zedan v. Westheim](#), 62 Va. App. 39, 741 S.E.2d 792 (2013).
Failure to afford adequate notice and hearing
Conn.—[Valentine v. Valentine](#), 149 Conn. App. 799, 90 A.3d 300 (2014).
Denied opportunity to explain and dispute evidence
Ariz.—[Volk v. Brame](#), 235 Ariz. 462, 333 P.3d 789 (Ct. App. Div. 1 2014).- 3 Tex.—[Arnell v. Arnell](#), 416 S.W.3d 188 (Tex. App. Dallas 2013).
- 4 Ga.—[Cormier v. Cormier](#), 280 Ga. 693, 631 S.E.2d 663 (2006).

- 5 Ala.—[Austin v. Austin](#), 159 So. 3d 753 (Ala. Civ. App. 2013).
- 6 Ala.—[Henderson v. Henderson](#), 73 So. 3d 1282 (Ala. Civ. App. 2011).
- Ohio—[Geary v. Geary](#), 2015-Ohio-259, 27 N.E.3d 877 (Ohio Ct. App. 5th Dist. Delaware County 2015).
- 7 Conn.—[Styracula v. Styracula](#), 139 Conn. App. 735, 57 A.3d 822 (2012).
- 8 U.S.—[D'Angelo v. New Hampshire Supreme Court](#), 740 F.3d 802 (1st Cir. 2014).
- 9 U.S.—[Turner v. Rogers](#), 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).
- 10 N.J.—[Schochet v. Schochet](#), 435 N.J. Super. 542, 89 A.3d 1264 (App. Div. 2014).

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16D C.J.S. Constitutional Law § 2370

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

1. In General

§ 2370. Liability of governmental subdivisions, agencies, or officials

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4410 to 4412

Due process does not bar a state from providing for the imposition of liability on any of state governmental subdivisions or agencies for damages incurred by its inhabitants who are injured by means or agencies licensed or permitted by the government.

The due process test for a rational basis, or a reasonable relationship to a legitimate governmental purpose, applies in determining the validity of a state law providing the basis for the tort liability of a state governmental agency,¹ subdivision,² or public corporation.³ The rational basis standard applies, instead of heightened scrutiny, since the right to recover from the government in tort is not a fundamental right.⁴

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Footnotes

- ¹ Idaho—[Harris v. State, Dept. of Health & Welfare](#), 123 Idaho 295, 847 P.2d 1156 (1992).
Transportation district

Ind.—[In re Train Collision at Gary, Ind.](#) on Jan. 18, 1993, 654 N.E.2d 1137 (Ind. Ct. App. 1995).

School district

U.S.—[Turrentine v. Brookhaven, Mississippi School Dist.](#), 794 F. Supp. 620, 76 Ed. Law Rep. 789 (S.D. Miss. 1992).

Right of action by officers against State

N.Y.—[Ruotolo v. State](#), 83 N.Y.2d 248, 609 N.Y.S.2d 148, 631 N.E.2d 90 (1994).

Minn.—[Snyder v. City of Minneapolis](#), 441 N.W.2d 781 (Minn. 1989).

Neb.—[Connelly v. City of Omaha](#), 284 Neb. 131, 816 N.W.2d 742 (2012).

Fla.—[Jetton v. Jacksonville Elec. Authority](#), 399 So. 2d 396 (Fla. 1st DCA 1981).

Prohibiting contracts that limit liability

U.S.—[Western Union Telegraph Co. v. Commercial Milling Co.](#), 218 U.S. 406, 31 S. Ct. 59, 54 L. Ed. 1088 (1910).

Neb.—[Connelly v. City of Omaha](#), 284 Neb. 131, 816 N.W.2d 742 (2012).

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16D C.J.S. Constitutional Law § 2371

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

1. In General

§ 2371. Liability of railroads

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4410 to 4412

Without violating due process of law, statutes may impose liabilities on railroad companies, including liability for injuries sustained as a result of the operation of the railroad.

A statute providing a right of recovery in state courts against railroad companies for their violations of safety standards imposed by the railroad's own rules, certain state laws, and federal regulations is valid under the Due Process Clause as rationally related to legitimate legislative purposes of giving accident victims a right of recovery, even as applied retroactively to correct the unexpected results of particular judicial decisions interpreting a preemption clause in the Federal Railroad Safety Act.¹ The due process standard applicable is one of highly deferential scrutiny for legislation regulation of economic and business affairs.²

Consistent with due process of law, railroad companies may be made liable for injuries to passengers except when the injury arises from the criminal negligence of the person injured or results from the violation of some expressed rule or regulation of the companies actually brought to the passenger's notice.³ The State cannot create an absolute liability for damages, irrespective of negligence on the part of a railroad company, and without imposing any statutory duty.⁴ A statute providing that proof of injury from a derailment is prima facie evidence of a railroad's want of reasonable skill and care in operation, if construed

as imposing a nondelegable duty of error-free railroad operation and ipso facto establishing liability to injured third parties, contravenes due process.⁵

A statute rendering a domestic railroad company, which leases its road to a nonresident, liable jointly with the lessee for the torts of the latter, does not deprive the lessor of its property without due process.⁶

The State may require railroad companies to construct and maintain without compensation fences along their right of way and may provide for allowance of damages from diminution in value of farms resulting from failure to fence.⁷ It may also hold a railroad company liable for damages occasioned by or resulting from an accident or collision, unless the company shows that the statutory requirements have been performed by it,⁸ and may provide that a railroad company which fails to keep its way fenced as specified by law shall be liable for the amount of all damages resulting from injuries to stock getting on the tracks because of defects in the fences.⁹

A statute does not deny due process to a person who is injured in the course of employment in or about a railroad because the statute restricts rights against the railroad company to those which an employee of the company would have.¹⁰

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Footnotes

- 1 U.S.—*Lundeen v. Canadian Pacific R. Co.*, 532 F.3d 682 (8th Cir. 2008).
- 2 U.S.—*Lundeen v. Canadian Pacific R. Co.*, 532 F.3d 682 (8th Cir. 2008).
- 3 U.S.—*Chicago, R I & P R Co v. Eaton*, 183 U.S. 589, 22 S. Ct. 228, 46 L. Ed. 341 (1902).
- 4 Ala.—*Birmingham Mineral R. Co. v. Parsons*, 100 Ala. 662, 13 So. 602 (1893).
- 5 U.S.—*Alabama Great Southern R. Co. v. Allied Chemical Corp.*, 501 F.2d 94 (5th Cir. 1974), on reh'g, 509 F.2d 539 (5th Cir. 1975).
- 6 U.S.—*Chicago & A.R. Co. v. McWhirt*, 243 U.S. 422, 37 S. Ct. 392, 61 L. Ed. 826 (1917).
- 7 U.S.—*Minneapolis & St. L. Ry. Co. v. Nelson*, 149 U.S. 368, 13 S. Ct. 871, 37 L. Ed. 772 (1893).
- 8 Neb.—*Middaugh v. Chicago & N.W.R. Co.*, 114 Neb. 438, 208 N.W. 139 (1926).
- 9 U.S.—*Missouri Pac R Co v. Terry*, 115 U.S. 523, 6 S. Ct. 114, 29 L. Ed. 467 (1885).
- 10 Tex.—*Fort Worth & D. C. Ry. Co. v. Welch*, 183 S.W.2d 730 (Tex. Civ. App. Amarillo 1944), writ refused.
U.S.—*Martin v. Pittsburg & L.E.R. Co.*, 203 U.S. 284, 27 S. Ct. 100, 51 L. Ed. 184 (1906).

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16D C.J.S. Constitutional Law § 2372

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

2. Liability for Personal Injuries

a. In General

§ 2372. General standards and principles

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4419, 4420, 4422

Statutes imposing and limiting liability for personal injuries are within the due process of law guaranty, when they rest on a rational basis, as reasonably related to a legitimate legislative purpose, and are not arbitrary or irrational.

Statutes permitting the imposition or limitation of liability for personal injuries are sustainable under a due process standard for a rational basis, as reasonably related to a legitimate governmental purpose,¹ or as not violating the due process prohibition against arbitrary or irrational action,² although plaintiffs generally do not have a constitutionally protected right in any potential tort claim for damages under state law for due process purposes.³ A tort claim becomes a vested protected property right for due process purposes once a final judgment is rendered in the plaintiff's favor.⁴

While due process does not preclude the imposition of strict liability, as in a products liability context applicable to inherently dangerous instrumentalities,⁵ statutes may not make innocent conduct tortious.⁶ Due process does not permit the imposition of an unreasonable and grossly excessive punishment on a tortfeasor⁷ although awards of punitive damages are permitted.⁸

A statute may not impose tort liability on the basis of an irrefutable presumption of causation without a reasonable basis in fact and without a fair opportunity to rebut the allegations, both as a matter of public policy and as a due process violation.⁹

The allowance and limitation of tort liability under the Federal Tort Claims Act is not a violation of due process,¹⁰ as is also true of state tort claims acts.¹¹ Limits placed on the potential tort liability of the manufacturers, distributors, and sellers of particular products, as in the example of guns or firearms and ammunition used in criminal activities or otherwise misused, are sustainable against a substantive due process challenge when not considered irrational or arbitrary.¹² A product liability act limitation creating a defense of "inherently unsafe products" is within the due process requirement of a rational relationship to a legitimate legislative purpose in abrogating frivolous lawsuits, even as applied to smokers' claims against tobacco companies.¹³

A statutory damages cap applicable to actions against state political subdivisions is sufficient to withstand a due process challenge under the applicable rational basis test since the right to recover in tort against a political subdivision is not a fundamental right.¹⁴ The Due Process Clause is not violated in personal injury cases by a statutory damages cap on awards of economic damages,¹⁵ and a cap on awards of noneconomic damages,¹⁶ nor by a statute which orders that future damage awards in excess of a specified amount are to be paid over a period of time rather than one lump sum.¹⁷ A statute may reduce the amount a minimally responsible party may have to pay as rationally related to the public interest in promoting settlements.¹⁸

Guest statutes permitting the imposition of liability on a property owner for injuries to guests by third persons, based on a duty to keep the premises safe, are sustainable under a due process rational basis test, including damage apportionment provisions.¹⁹

Retroactive application or effect.

Due process does not permit a statute to retroactively impose tort liability by creating a duty that did not exist when the injury was incurred,²⁰ but a statute may retroactively apply to require the dismissal of a pending action if no judgment has been rendered and the parties thus do not have a vested right when the Congress acts on a rational basis to give comprehensive effect to a new law.²¹ In contrast, statutes may not extinguish existing bases of recovery applicable to cases pending at the time of the enactment when the asserted public interest does not outweigh the individual plaintiffs' vested rights and private interests in recovering full compensation for injuries.²² Statutes may not add new prerequisite elements to limit an existing cause of action as retroactively applicable to claims vested at the time of the enactment, particularly in the absence of an alternative remedy.²³ A statute relating the plaintiff's burden of proof in establishing causation in negligence and product liability claims, under a theory of risk contribution, does not violate the due process by imposing retroactive liability since it only modifies the manner in which a plaintiff can prove a case and is not arbitrary or irrational.²⁴

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Footnotes

- 1 D.C.—*District of Columbia v. Beretta, U.S.A., Corp.*, 872 A.2d 633 (D.C. 2005).
Ga.—*Couch v. Red Roof Inns, Inc.*, 291 Ga. 359, 729 S.E.2d 378 (2012).
Ill.—*Reilly ex rel. Reilly v. Wyeth*, 377 Ill. App. 3d 20, 315 Ill. Dec. 428, 876 N.E.2d 740 (1st Dist. 2007).
Mich.—*Kenkel v. Stanley Works*, 256 Mich. App. 548, 665 N.W.2d 490 (2003).
Tex.—*Mills v. Fletcher*, 229 S.W.3d 765 (Tex. App. San Antonio 2007).
As to immunity from suit and liability limitations within due process, see § 2387.
Utility contractor indemnity statute
Ga.—*Glass Systems, Inc. v. Georgia Power Co.*, 288 Ga. 85, 703 S.E.2d 605 (2010).
State reimbursement from third parties

Minn.—*In re Individual 35W Bridge Litigation*, 806 N.W.2d 820 (Minn. 2011).

U.S.—*Burton v. American Cyanamid Co.*, 775 F. Supp. 2d 1093 (E.D. Wis. 2011).

Tex.—*Mills v. Fletcher*, 229 S.W.3d 765 (Tex. App. San Antonio 2007).

U.S.—*Wilson v. Big Sandy Healthcare, Inc.*, 553 F. Supp. 2d 825 (E.D. Ky. 2008), judgment *aff'd*, 576 F.3d 329 (6th Cir. 2009).

No common-law remedy affected

Pa.—*Erdely v. Hinchcliffe and Keener, Inc.*, 2005 PA Super 151, 875 A.2d 1078 (2005).

Ill.—*Reilly ex rel. Reilly v. Wyeth*, 377 Ill. App. 3d 20, 315 Ill. Dec. 428, 876 N.E.2d 740 (1st Dist. 2007).

D.C.—*District of Columbia v. Beretta, U.S.A., Corp.*, 872 A.2d 633 (D.C. 2005).

U.S.—*Owens v. American Cyanamid Co.*, 787 F. Supp. 2d 828 (E.D. Wis. 2011); *Burton v. American Cyanamid Co.*, 775 F. Supp. 2d 1093 (E.D. Wis. 2011).

U.S.—*Pruett v. Skouteris*, 743 F. Supp. 2d 718 (W.D. Tenn. 2010).

As to due process limitations on damages, generally, see § 2384.

U.S.—*Pruett v. Skouteris*, 743 F. Supp. 2d 718 (W.D. Tenn. 2010).

As to due process limitations on punitive damages, generally, see § 2385.

No double penalty imposed

U.S.—*In re Trans Union Corp. Privacy Litigation*, 211 F.R.D. 328 (N.D. Ill. 2002).

U.S.—*Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307 (S.D. Fla. 2009), *aff'd*, 635 F.3d 1277 (11th Cir. 2011).

U.S.—*Wilson v. Big Sandy Healthcare, Inc.*, 553 F. Supp. 2d 825 (E.D. Ky. 2008), judgment *aff'd*, 576 F.3d 329 (6th Cir. 2009).

Miss.—*City of Jackson v. Sutton*, 797 So. 2d 977 (Miss. 2001).

Tex.—*Texas Parks and Wildlife Dept. v. Garland*, 313 S.W.3d 920 (Tex. App. Tyler 2010).

Conn.—*Gilland v. Sportsmen's Outpost, Inc.*, 2011 WL 2479693 (Conn. Super. Ct. 2011).

Federal act as rationally based

Under the Federal Protection of Lawful Commerce in Arms Act, Congress could rationally justify insulating the firearms industry from a specified set of lawsuits, within the constraints of substantive due process.

U.S.—*Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009).

U.S.—*Hughes v. Tobacco Institute, Inc.*, 278 F.3d 417 (5th Cir. 2001).

Neb.—*Connelly v. City of Omaha*, 284 Neb. 131, 816 N.W.2d 742 (2012).

No due process violation by damages cap

Utah—*Parks v. Utah Transit Authority*, 2002 UT 55, 53 P.3d 473 (Utah 2002).

Tex.—*Mills v. Fletcher*, 229 S.W.3d 765 (Tex. App. San Antonio 2007).

Md.—*Edmonds v. Murphy*, 83 Md. App. 133, 573 A.2d 853 (1990), judgment *aff'd*, 325 Md. 342, 601 A.2d 102 (1992).

Mich.—*Kenkel v. Stanley Works*, 256 Mich. App. 548, 665 N.W.2d 490 (2003).

Damages viewed as inherently subjective and tainted

Ohio—*Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468, 2007-Ohio-6948, 880 N.E.2d 420 (2007).

Rational basis without fundamental right

Ohio—*Simpkins v. Grace Brethren Church of Delaware*, 2014-Ohio-3465, 16 N.E.3d 687 (Ohio Ct. App. 5th Dist. Delaware County 2014).

N.Y.—*Doe v. State*, 189 A.D.2d 199, 595 N.Y.S.2d 592, 1 A.D.D. 968 (4th Dep't 1993).

Ill.—*Yoder v. Ferguson*, 381 Ill. App. 3d 353, 319 Ill. Dec. 380, 885 N.E.2d 1060 (1st Dist. 2008).

Ga.—*Couch v. Red Roof Inns, Inc.*, 291 Ga. 359, 729 S.E.2d 378 (2012).

Ill.—*Lazenby v. Mark's Const., Inc.*, 236 Ill. 2d 83, 337 Ill. Dec. 884, 923 N.E.2d 735 (2010).

D.C.—*District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163 (D.C. 2008).

U.S.—*Gibson v. American Cyanamid Co.*, 760 F.3d 600 (7th Cir. 2014).

Fla.—*American Optical Corp. v. Spiewak*, 73 So. 3d 120 (Fla. 2011).

U.S.—*Owens v. American Cyanamid Co.*, 787 F. Supp. 2d 828 (E.D. Wis. 2011); *Burton v. American Cyanamid Co.*, 775 F. Supp. 2d 1093 (E.D. Wis. 2011).

16D C.J.S. Constitutional Law § 2373

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

2. Liability for Personal Injuries

a. In General

§ 2373. Medical malpractice liability

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4422

Statutes regulating liability for medical malpractice are subject to due process of law requirements for a rational basis, as a reasonable relation to a legitimate state interest, and specificity, and must not employ suspect classifications or operate in an arbitrary manner.

The courts have sustained various statutes regulating liability for medical malpractice, as against the objection that they violate the guaranty of due process of law,¹ including state tort claims acts,² and the Federal Tort Claims Act.³ A medical malpractice liability statute is an economic regulatory statute subject to due process review under a rational basis standard, provided the act does not employ suspect classifications and is not arbitrary.⁴ Differentiating health care litigants from other litigants does not inherently violate due process, in the face of a rational basis for doing so, and absent a distinction based on a suspect classification, such as race or national origin.⁵

Medical malpractice regulatory statutes must also meet due process requirements of clarity, and not fail as vague or indefinite, when measured by a standard of whether persons of ordinary intelligence must necessarily guess at its meaning and differ as to

its application.⁶ A statute setting a gross negligence standard of liability for certain emergency medical care, without defining "gross negligence," satisfies due process requirements under this standard.⁷

A statutory damages cap on medical malpractice claims is not a due process violation when rationally related to the statute's stated goals,⁸ including a limitation on the recovery of quality-of-life damages,⁹ and noneconomic damage awards.¹⁰ The retroactive application of a damages limitation statute to a claim neither filed nor noticed prior to the enactment is not a due process violation since the patient at most has an expectancy or prospect of a recovery of an indeterminate amount of damages at an unspecified date in the future and has no vest right to an award of particular damages.¹¹ A statute regulating how damages are paid may violate the guaranty of due process of law.¹²

A statute may impose limitations on medical malpractice actions by requiring a certificate of good faith by the complainant, including an accompanying opinion letter from a similar health care provider stating that there appears to be evidence of medical negligence, as a requirement reasonably related to the state's legitimate interest in preventing frivolous or meritless medical malpractice claims.¹³ A statute setting forth requirements for the choice of experts for medical malpractice claims does not infringe the fundamental right to bring a medical malpractice action, and is sustainable under the rational basis test, when the statute neither imposes a burden upon a plaintiff at filing nor unduly limits who a plaintiff can employ as an expert, but, rather, specifies the type of evidence a plaintiff must offer to prove one of the elements of a medical malpractice claim.¹⁴

A statutory notice requirement for medical malpractice claims, as applied to governmental defendants under a state tort claims act is not a due process violation, even as applied retroactively to a claim, since there is no protected right or property interest in a suit against a governmental entity.¹⁵

The State may, without denying due process, set up a medical malpractice review panel procedure, by which all medical malpractice claims are required to be reviewed,¹⁶ provided the statute meets due process standards for notice and an opportunity to be heard.¹⁷ The provisions must comply with the requirement that the members of the medical malpractice screening panel are to base their findings on the issues and evidence presented at the hearing as being consistent with their role as fact finders and fundamental to the concept of due process.¹⁸ A bond requirement subject to discretionary reduction for indigent plaintiffs after a malpractice tribunal rejects an offer of proof as legally insufficient must meet a standard of reasonableness to comply with due process, taking into consideration the plaintiff's ability to pay and prior payment of actual expenses to prevent dismissal but also looking to the merits of the claim.¹⁹

Statutory requirements applicable to expert reports in support of health care liability claims are rationally related to the legitimate state purpose of ensuring that medical practitioners are not placed in the situation of defending frivolous claims at a high cost to the health care system.²⁰ The statute need not require that plaintiffs receive notice of deficiencies in the report before dismissal for failure to timely file a report that satisfies statutory requirements.²¹

A statute may provide for the abatement of a medical malpractice wrongful death claim on the death of the patient without depriving the estate the deceased patient's spouse of a vested property interest protected under the Due Process Clause when the right of action is entirely statutory.²²

CUMULATIVE SUPPLEMENT

Cases:

Illinois statute, offering a medical malpractice defendant the option to pay damages award in periodic installments, was special remedial statute, and thus its repeal applied retroactively to make the statute unavailable in patient's pending medical malpractice action against United States under the Federal Tort Claims Act (FTCA); periodic-payment statute provided method for defendants to pay damages awards in medical malpractice cases. 28 U.S.C.A. § 1346(b)(1); 735 Ill. Comp. Stat. Ann. 5/2-1705. *Clanton v. United States*, 943 F.3d 319 (7th Cir. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Wahi v. Charleston Area Medical Center*, 453 F. Supp. 2d 942 (S.D. W. Va. 2006), judgment aff'd, 562 F.3d 599 (4th Cir. 2009).
 Ariz.—*Governale v. Lieberman*, 226 Ariz. 443, 250 P.3d 220 (Ct. App. Div. 1 2011).
 Conn.—*Lohnes v. Hospital of St. Raphael*, 132 Conn. App. 68, 31 A.3d 810 (2011).
 Ga.—*Gliemmo v. Cousineau*, 287 Ga. 7, 694 S.E.2d 75 (2010).
 La.—*Price v. Medical Center of Louisiana at New Orleans*, 999 So. 2d 29 (La. Ct. App. 4th Cir. 2008).
 Mass.—*Faircloth v. DiLillo*, 466 Mass. 120, 993 N.E.2d 338 (2013).
 N.M.—*Salopek v. Friedman*, 2013-NMCA-087, 308 P.3d 139 (N.M. Ct. App. 2013).
 Tex.—*Hebert v. Hopkins*, 395 S.W.3d 884 (Tex. App. Austin 2013).
- 2 Miss.—*Brown v. Southwest Mississippi Regional Medical Center*, 989 So. 2d 933 (Miss. Ct. App. 2008).
- 3 U.S.—*Wilson v. Big Sandy Healthcare, Inc.*, 553 F. Supp. 2d 825 (E.D. Ky. 2008), judgment aff'd, 576 F.3d 329 (6th Cir. 2009).
- 4 N.M.—*Salopek v. Friedman*, 2013-NMCA-087, 308 P.3d 139 (N.M. Ct. App. 2013).
Rational basis test applies
 Ariz.—*Governale v. Lieberman*, 226 Ariz. 443, 250 P.3d 220 (Ct. App. Div. 1 2011).
 Conn.—*Lohnes v. Hospital of St. Raphael*, 132 Conn. App. 68, 31 A.3d 810 (2011).
 Tex.—*Hebert v. Hopkins*, 395 S.W.3d 884 (Tex. App. Austin 2013).
 Utah—*Judd v. Drezga*, 2004 UT 91, 103 P.3d 135 (Utah 2004).
- 5 Tex.—*Hebert v. Hopkins*, 395 S.W.3d 884 (Tex. App. Austin 2013).
- 6 Ga.—*Gliemmo v. Cousineau*, 287 Ga. 7, 694 S.E.2d 75 (2010).
- 7 Ga.—*Gliemmo v. Cousineau*, 287 Ga. 7, 694 S.E.2d 75 (2010).
- 8 U.S.—*M.D. v. U.S.*, 745 F. Supp. 2d 1274 (M.D. Fla. 2010).
 N.M.—*Salopek v. Friedman*, 2013-NMCA-087, 308 P.3d 139 (N.M. Ct. App. 2013).
A.L.R. Library
 Validity, construction, and application of state statutory provisions limiting amount of recovery in medical malpractice claims, 26 A.L.R.5th 245.
- 9 Utah—*Judd v. Drezga*, 2004 UT 91, 103 P.3d 135 (Utah 2004).
- 10 U.S.—*M.D. v. U.S.*, 745 F. Supp. 2d 1274 (M.D. Fla. 2010).
 Fla.—*Weingrad v. Miles*, 29 So. 3d 406 (Fla. 3d DCA 2010).
- 11 Fla.—*Weingrad v. Miles*, 29 So. 3d 406 (Fla. 3d DCA 2010).
- 12 U.S.—*Boyd v. Bulala*, 877 F.2d 1191 (4th Cir. 1989), certified question on other grounds answered, 239 Va. 218, 389 S.E.2d 670 (1990).
Modification or abrogation of collateral source rule
 Ala.—*Marsh v. Green*, 782 So. 2d 223 (Ala. 2000).
Periodic payments of future damage awards
 Ohio—*Galayda v. Lake Hosp. Sys., Inc.*, 71 Ohio St. 3d 421, 1994-Ohio-64, 644 N.E.2d 298 (1994).
A.L.R. Library
 Validity and construction of state statute abrogating collateral source rule as to medical malpractice actions, 74 A.L.R.4th 32.
- 13 Conn.—*Lohnes v. Hospital of St. Raphael*, 132 Conn. App. 68, 31 A.3d 810 (2011).

- 14 Ariz.—*Governale v. Lieberman*, 226 Ariz. 443, 250 P.3d 220 (Ct. App. Div. 1 2011).
- 15 Miss.—*Brown v. Southwest Mississippi Regional Medical Center*, 989 So. 2d 933 (Miss. Ct. App. 2008).
- 16 U.S.—*Wahi v. Charleston Area Medical Center*, 453 F. Supp. 2d 942 (S.D. W. Va. 2006), judgment aff'd, 562 F.3d 599 (4th Cir. 2009).
- La.—*Price v. Medical Center of Louisiana at New Orleans*, 999 So. 2d 29 (La. Ct. App. 4th Cir. 2008).
- Mass.—*Faircloth v. DiLillo*, 466 Mass. 120, 993 N.E.2d 338 (2013).
- Me.—*Estate of Nickerson v. Carter*, 2014 ME 19, 86 A.3d 658 (Me. 2014).
- Mediation confidentiality requirement**
- Cal.—*Cassel v. Superior Court*, 51 Cal. 4th 113, 119 Cal. Rptr. 3d 437, 244 P.3d 1080 (2011).
- A.L.R. Library**
- Validity and construction of state statutory provisions relating to limitations on amount of recovery in medical malpractice claim and submission of such claim to pretrial panel, 80 A.L.R.3d 583 (secs. 3-7 superseded in part *Validity, construction, and application of state statutory provisions limiting amount of recovery in medical malpractice claims*, 26 A.L.R.5th 245).
- 17 La.—*Price v. Medical Center of Louisiana at New Orleans*, 999 So. 2d 29 (La. Ct. App. 4th Cir. 2008).
- Test of adequate procedures**
- U.S.—*Wahi v. Charleston Area Medical Center*, 453 F. Supp. 2d 942 (S.D. W. Va. 2006), judgment aff'd, 562 F.3d 599 (4th Cir. 2009).
- 18 Me.—*Estate of Nickerson v. Carter*, 2014 ME 19, 86 A.3d 658 (Me. 2014).
- 19 Mass.—*Faircloth v. DiLillo*, 466 Mass. 120, 993 N.E.2d 338 (2013).
- 20 Tex.—*Hebert v. Hopkins*, 395 S.W.3d 884 (Tex. App. Austin 2013).
- Applicable to pro se prison inmate**
- Tex.—*Bankhead v. Spence*, 314 S.W.3d 464 (Tex. App. Waco 2010).
- 21 Tex.—*Walker v. Gutierrez*, 111 S.W.3d 56 (Tex. 2003).
- 22 Wis.—*Lornson v. Siddiqui*, 2007 WI 92, 302 Wis. 2d 519, 735 N.W.2d 55 (2007).

16D C.J.S. Constitutional Law § 2374

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

2. Liability for Personal Injuries

a. In General

§ 2374. Automobile and airplane accident liability

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4423, 4424

Due process requires statutes regulating liability for injuries or death from the operation of automobiles or aircraft to rest on a rational basis, having a reasonable relationship to legitimate state interests.

Due process requires statutes regulating liability for injuries or death to rest on a rational basis, having a reasonable relationship to legitimate state interests, in the context of the operation of automobiles¹ or aircraft.² The rational basis standard applies since claims of a right of action or recovery generally do not involve fundamental rights entitled to heightened scrutiny.³

While, generally, the opportunity to be heard must be preserved,⁴ and a substantial and efficient remedy must be provided,⁵ liability limitations do not deny due process when based on the nature of certain conduct, as that applicable to a guest passenger of the motorist,⁶ or the guest passenger in an airplane.⁷

Damages limitations are generally within the constraints of due process as rationally based,⁸ including limitations under tort claims acts affecting recoveries for motor vehicle accidents.⁹

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Footnotes

- 1

Md.—*Allstate Ins. Co. v. Kim*, 376 Md. 276, 829 A.2d 611 (2003).
 Neb.—*Staley v. City of Omaha*, 271 Neb. 543, 713 N.W.2d 457 (2006).
 Nev.—*Arata v. Faubion*, 123 Nev. 153, 161 P.3d 244 (2007).
 N.J.—*Caviglia v. Royal Tours of America*, 178 N.J. 460, 842 A.2d 125 (2004).
 N.M.—*Wachocki v. Bernalillo County Sheriff's Dept.*, 147 N.M. 720, 2010-NMCA-021, 228 P.3d 504 (Ct. App. 2009), *aff'd*, 2011-NMSC-039, 150 N.M. 650, 265 P.3d 701 (2011).
Vicarious liability for permissive users
 N.Y.—*Chilberg v. Chilberg*, 13 A.D.3d 1089, 788 N.Y.S.2d 533 (4th Dep't 2004).
- 2

Or.—*Urton v. Hudson*, 101 Or. App. 147, 790 P.2d 12 (1990).
Warsaw Convention jurisdictional limitations
 U.S.—*Lee v. China Airlines Ltd.*, 669 F. Supp. 979 (C.D. Cal. 1987).
Military Claims Act
 U.S.—*Murphy ex rel. Estate of Payne v. U.S.*, 340 F. Supp. 2d 160 (D. Conn. 2004), *aff'd*, 427 F.3d 158 (2d Cir. 2005).
Application of law of domicile and contract
 U.S.—*Scott v. Eastern Air Lines, Inc.*, 399 F.2d 14 (3d Cir. 1967).
- 3

Neb.—*Staley v. City of Omaha*, 271 Neb. 543, 713 N.W.2d 457 (2006).
 Nev.—*Arata v. Faubion*, 123 Nev. 153, 161 P.3d 244 (2007).
 N.J.—*Caviglia v. Royal Tours of America*, 178 N.J. 460, 842 A.2d 125 (2004).
 N.M.—*Wachocki v. Bernalillo County Sheriff's Dept.*, 147 N.M. 720, 2010-NMCA-021, 228 P.3d 504 (Ct. App. 2009), *aff'd*, 2011-NMSC-039, 150 N.M. 650, 265 P.3d 701 (2011).
 N.Y.—*Chilberg v. Chilberg*, 13 A.D.3d 1089, 788 N.Y.S.2d 533 (4th Dep't 2004).
- 4

Cal.—*Bennett v. Bodily*, 211 Cal. App. 3d 133, 259 Cal. Rptr. 199 (2d Dist. 1989).
- 5

Mich.—*Brooks v. Mammo*, 254 Mich. App. 486, 657 N.W.2d 793 (2002).
- 6

Ill.—*Delany v. Badame*, 49 Ill. 2d 168, 274 N.E.2d 353 (1971).
 Ind.—*Brady v. Acs*, 264 Ind. 285, 342 N.E.2d 837 (1976).
 Iowa—*Beitz v. Horak*, 271 N.W.2d 755 (Iowa 1978).
 Or.—*Urton v. Hudson*, 101 Or. App. 147, 790 P.2d 12 (1990).
- 7

Or.—*Urton v. Hudson*, 101 Or. App. 147, 790 P.2d 12 (1990).
- 8

Fla.—*Vargas v. Enterprise Leasing Co.*, 993 So. 2d 614 (Fla. 4th DCA 2008), decision approved, 60 So. 3d 1037 (Fla. 2011).
Noneconomic damages of uninsured drivers
 N.J.—*Caviglia v. Royal Tours of America*, 178 N.J. 460, 842 A.2d 125 (2004).
Parent-child liability limitation
 Md.—*Allstate Ins. Co. v. Kim*, 376 Md. 276, 829 A.2d 611 (2003).
Damage limitation for lessors
 Fla.—*Sontay v. Avis Rent-A-Car Systems, Inc.*, 872 So. 2d 316 (Fla. 4th DCA 2004).
 Mich.—*Phillips v. Mirac, Inc.*, 470 Mich. 415, 685 N.W.2d 174 (2004).
Court's jurisdictional limit
 Mich.—*Brooks v. Mammo*, 254 Mich. App. 486, 657 N.W.2d 793 (2002).
Damage limitation exemption
 N.Y.—*Dittmer v. Terzian*, 6 Misc. 3d 590, 787 N.Y.S.2d 617 (Sup 2004).
- 9

Neb.—*Staley v. City of Omaha*, 271 Neb. 543, 713 N.W.2d 457 (2006).
 N.M.—*Wachocki v. Bernalillo County Sheriff's Dept.*, 147 N.M. 720, 2010-NMCA-021, 228 P.3d 504 (Ct. App. 2009), *aff'd*, 2011-NMSC-039, 150 N.M. 650, 265 P.3d 701 (2011).

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16D C.J.S. Constitutional Law § 2375

Corpus Juris Secundum | June 2021 Update

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

2. Liability for Personal Injuries

a. In General

§ 2375. Liability for wrongful death

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4421

Due process is not violated by rationally based statutes imposing or limiting liability for death caused by a wrongful act.

Due process is not violated by rationally based statutes providing or limiting a right of action by specified beneficiaries for wrongful death,¹ as may provide for recoverable economic damages with caps on noneconomic damages.² Wrongful death damage apportionment provisions distinguishing liability for negligence and liability on other grounds are rationally based within due process limitations.³

Affording a remedy to a class defined as surviving children, but not including children of predeceased children, is not an unreasonable classification for due process purposes even though the classification does not follow the state's succession law.⁴

A statute which allows the mother to maintain an action for the wrongful death of an illegitimate child but denies the father that right does not deny the due process rights of children born out-of-wedlock.⁵

The retroactive application of an increased cap on damages in wrongful death actions for a loss of society and companionship, applicable to cases for which cause of action accrued before the enactment of the increased cap if the wrongful death action is filed after the effective date of the increased cap, violates a tort defendant's due process rights as not rationally based in the absence of a substantial public purpose supporting retroactivity.⁶

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Footnotes

- 1 U.S.—*Estate of Sisk v. Manzanares*, 270 F. Supp. 2d 1265 (D. Kan. 2003).
Md.—*Dixon v. Ford Motor Co.*, 433 Md. 137, 70 A.3d 328 (2013).
Governmental Tort Claims Act
Utah—*Tindley v. Salt Lake City School Dist.*, 2005 UT 30, 116 P.3d 295, 200 Ed. Law Rep. 406 (Utah 2005) (holding modified on other grounds by, *Moss v. Pete Suazo Utah Athletic Com'n*, 2007 UT 99, 175 P.3d 1042 (Utah 2007)).
Meretricious spouse excluded
Cal.—*Garcia v. Douglas Aircraft Co.*, 133 Cal. App. 3d 890, 184 Cal. Rptr. 390 (2d Dist. 1982).
Vehicle lessor's damage liability limited
Mich.—*Phillips v. Mirac, Inc.*, 251 Mich. App. 586, 651 N.W.2d 437 (2002), decision aff'd, 470 Mich. 415, 685 N.W.2d 174 (2004).
- 2 U.S.—*Estate of Sisk v. Manzanares*, 270 F. Supp. 2d 1265 (D. Kan. 2003).
Md.—*Dixon v. Ford Motor Co.*, 433 Md. 137, 70 A.3d 328 (2013).
Or.—*Greist v. Phillips*, 322 Or. 281, 906 P.2d 789 (1995).
- 3 Conn.—*Bhinder v. Sun Co., Inc.*, 263 Conn. 358, 819 A.2d 822 (2003).
- 4 La.—*Mazoue v. Avondale Industries, Inc.*, 839 So. 2d 171 (La. Ct. App. 4th Cir. 2003), writ denied, 842 So. 2d 406 (La. 2003).
- 5 Ga.—*Hughes v. Parham*, 241 Ga. 198, 243 S.E.2d 867 (1978), judgment aff'd, 441 U.S. 347, 99 S. Ct. 1742, 60 L. Ed. 2d 269 (1979).
- 6 Wis.—*Schultz v. Natwick*, 2001 WI App 281, 249 Wis. 2d 317, 638 N.W.2d 319 (Ct. App. 2001), decision aff'd, 2002 WI 125, 257 Wis. 2d 19, 653 N.W.2d 266 (2002).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

2. Liability for Personal Injuries

b. Workers' Compensation Acts

§ 2376. General standards and principles

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4186

The change of an employer's liability for injuries to employees as effected by workers' compensation acts is not of itself a denial of due process of law even though the acts impose liability on the employer regardless of the employer's fault and abrogate common-law defenses.

A workers' compensation act that is rationally related to recognized legitimate government objectives satisfies procedural and substantive due process,¹ including a requirement that the subject employer or insurer have a sufficient connection to the state for the application of the state's law.² The statutory changes of an employer's common-law liability for injuries to persons employed arising out of or in the course of employment, as effected by workers' compensation acts, do not violate the guaranties of due process of law in the state and federal constitutions,³ even though the change results in imposing a liability on the employer without regard to fault,⁴ abrogating, modifying, or restricting the defenses of contributory negligence, assumed risk, and negligence of a fellow servant.⁵

A liberal construction of the compensation act by a board in favor of the claimant does not contravene the employer's right to due process.⁶

CUMULATIVE SUPPLEMENT

Cases:

Statute providing for deduction of excess temporary total disability (TTD) benefits from a permanent partial disability (PPD) award was rationally related to State's legitimate interest in ensuring fairness, efficiency, objectivity, predictability and uniformity in the awarding of PPD benefits, and did not violate substantive due process rights of city police officer whose PPD award was reduced under such statute. [U.S. Const. Amend. 14](#); [Okla. Const. art. 2, § 7](#); [85A Okla. Stat. Ann. § 89](#). [Braitsch v. City of Tulsa, 2018 OK 100, 436 P.3d 14 \(Okla. 2018\)](#), as corrected, (Dec. 19, 2018).

Hernia provision of the State Administrative Workers' Compensation Act, which placed a six-week limit on temporary total disability (TTD) benefits for hernias, did not deny claimant basic due process under either the State or the Federal constitutions; the six-week period for TTD benefits chosen by the Legislature aligned with the higher end of the expected recovery time for hernias and the return to work scale, and was rationally related to the expressed state interest in reducing fraud and decreasing employers' costs. [U.S. Const. Amend. 14, § 1](#); [Okla. Const. art. 2, § 7](#); [85A Okla. Stat. Ann. § 61](#). [Graham v. D & K Oilfield Services, Inc., 2017 OK 72, 404 P.3d 863 \(Okla. 2017\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Mont.—Walters v. Flathead Concrete Products, Inc., 2011 MT 45, 359 Mont. 346, 249 P.3d 913 \(2011\).](#)
- 2 [Neb.—Contreras v. T.O. Haas, LLC, 22 Neb. App. 276, 852 N.W.2d 339 \(2014\).](#)
- 3 [Cal.—Federal Insurance Company v. Workers' Compensation Appeals Board, 221 Cal. App. 4th 1116, 165 Cal. Rptr. 3d 288 \(2d Dist. 2013\), review denied, \(Feb. 19, 2014\).](#)
[U.S.—Cardillo v. Liberty Mut. Ins. Co., 330 U.S. 469, 67 S. Ct. 801, 91 L. Ed. 1028 \(1947\).](#)
Exclusive remedy
[U.S.—Mountain Timber Co. v. State of Washington, 243 U.S. 219, 37 S. Ct. 260, 61 L. Ed. 685 \(1917\).](#)
Presumptions and burden of proof
[U.S.—Hawkins v. Bleakly, 243 U.S. 210, 37 S. Ct. 255, 61 L. Ed. 678 \(1917\).](#)
- 4 [U.S.—Cudahy Packing Co. of Nebraska v. Parramore, 263 U.S. 418, 44 S. Ct. 153, 68 L. Ed. 366, 30 A.L.R. 532 \(1923\).](#)
- 5 [U.S.—Boston & M.R.R. v. Armburg, 285 U.S. 234, 52 S. Ct. 336, 76 L. Ed. 729 \(1932\).](#)
- 6 [Ky.—Cowden Mfg. Co. v. Fultz, 472 S.W.2d 679 \(Ky. 1971\).](#)

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16D C.J.S. Constitutional Law § 2377

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

2. Liability for Personal Injuries

b. Workers' Compensation Acts

§ 2377. Property right in compensation benefits and associated procedures

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4186

A claimant's interest in workers' compensation benefits and procedures is a property right which cannot be taken away without due process of law.

A claimant's interest in workers' compensation benefits is a property right which cannot be taken away without due process of law¹ as is the right to seek redress for a workers' compensation claim using the state's adjudicatory procedures.² Worker's compensation benefits are not, however, a fundamental right for purposes of a heightened level of scrutiny in a due process challenge, requiring scrutiny only for a rational basis,³ and a right to workers' compensation benefits must be vested to be protected by the due process guarantee.⁴

The property interest does not extend to every aspect of the workers' compensation benefit scheme and does not encompass a preference for one form of treatment over another⁵ or one provider over another.⁶

The retroactive application of workers' compensation laws in a manner that adversely affects the substantive rights of a claimant constitutes a taking of property without due process of law.⁷

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Footnotes

- 1 Colo.—[Ortega v. Industrial Claim Appeals Office of State](#), 207 P.3d 895 (Colo. App. 2009).
- 2 Fla.—[Franklin v. Riviera Beach Fire Rescue](#), 132 So. 3d 1219 (Fla. 1st DCA 2014).
- 3 Conn.—[Pagan v. Carey Wiping Materials Corp.](#), 144 Conn. App. 413, 73 A.3d 784 (2013), certification denied, 310 Conn. 925, 77 A.3d 142 (2013).
- 4 Colo.—[Snook v. Joyce Homes, Inc.](#), 215 P.3d 1210 (Colo. App. 2009).
- 5 Minn.—[Schatz v. Interfaith Care Center](#), 811 N.W.2d 643 (Minn. 2012).
- 6 W. Va.—[Wampler Foods, Inc. v. Workers' Compensation Div.](#), 216 W. Va. 129, 602 S.E.2d 805 (2004).
- 7 **Past due benefits vested**
Mont.—[Schmill v. Liberty Northwest Ins. Corp.](#), 2009 MT 430, 354 Mont. 88, 223 P.3d 842 (2009).
- 8 N.D.—[Whedbee v. North Dakota Workforce Safety & Ins. Fund](#), 2014 ND 79, 845 N.W.2d 632 (N.D. 2014).
- 9 Colo.—[Franz v. Industrial Claim Appeals Office](#), 250 P.3d 755 (Colo. App. 2010).
- 10 Kan.—[Bryant v. Midwest Staff Solutions, Inc.](#), 292 Kan. 585, 257 P.3d 255 (2011).

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16D C.J.S. Constitutional Law § 2378

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

2. Liability for Personal Injuries

b. Workers' Compensation Acts

§ 2378. Substantive requirements for eligibility and benefits

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4186

Due process standards are applicable to the specific substantive provisions of workers' compensation acts, requiring particular assessments for the validity of each category of provision governing eligibility, benefits, and other provisions.

Due process standards applicable to the specific substantive provisions of workers' compensation acts are generally met as applied to provisions for eligibility,¹ exclusivity of remedy,² employer coverage,³ compensability,⁴ benefit award amounts,⁵ limitations on benefit awards,⁶ private carrier coverage requirements,⁷ employer insolvency assessments,⁸ medical treatment or service coverage,⁹ medical impairment standards,¹⁰ lump-sum benefit payments,¹¹ dependents,¹² and the allowance of attorney's fees.¹³

Subrogation.

The failure to provide for subrogation to the employer or insurer that pays workers' compensation benefits to a claimant under the law of another state does not deprive them of due process, as they have no constitutionally protected interest in any sums an employee receives from third party tortfeasors.¹⁴ A statute may allocate proportionate shares between employees and employers in subrogation claims, based on the subrogation interest of the statutory subrogee and the claimant's uncompensated damages.¹⁵ A statute providing that the rights of an administrator or self-insuring employer are automatically subrogated to the employee's rights in litigation against a third-party tortfeasor is an unconstitutional violation of due process.¹⁶

CUMULATIVE SUPPLEMENT

Cases:

Statute authorizing employer's workers' compensation insurer to obtain second independent medical examination (IME) of employee who suffered heat stroke-related injury while working did not permit unreasonable government action that violated right of substantive due process; government had legitimate concern in orderly workers' compensation process that promoted continued economic welfare of employers who paid into compensation fund and welfare of employees who received compensation benefits, improving financial viability of system, controlling costs of system, and providing benefits were legitimate governmental objectives of Workers' Compensation Act, and IME process was clearly related to government's concern for effectively administering workers' compensation process and was reasonably related to legitimate government objective of promoting efficiency and self-reliance in process. [Mont. Const. art. 2, § 17](#); [Mont. Code Ann. § 39-71-605](#). [Robinson v. State Compensation Mutual Insurance Fund](#), 2018 MT 259, 393 Mont. 178, 430 P.3d 69 (2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[Usery v. Turner Elkhorn Mining Co.](#), 428 U.S. 1, 96 S. Ct. 2882, 49 L. Ed. 2d 752, 1 Fed. R. Evid. Serv. 243 (1976).
Disqualification by misrepresentation
N.Y.—[Schuss v. Delta Airlines, Inc.](#), 120 A.D.3d 850, 991 N.Y.S.2d 177 (3d Dep't 2014).
Ineligible by incarceration
La.—[Blackledge v. Sol's Pipe & Steel, Inc.](#), 59 So. 3d 564 (La. Ct. App. 2d Cir. 2011).
Mont.—[Goble v. Montana State Fund](#), 2014 MT 99, 374 Mont. 453, 325 P.3d 1211 (2014).
Ineligible by retirement
Mont.—[Satterlee v. Lumberman's Mut. Cas. Co.](#), 2009 MT 368, 353 Mont. 265, 222 P.3d 566 (2009).
Health provider's criminal exclusion
Ohio—[Wloszek v. Ohio Bur. of Workers' Comp.](#), 2013-Ohio-769, 987 N.E.2d 342 (Ohio Ct. App. 10th Dist. Franklin County 2013).
- 2 Conn.—[Desmond v. Yale-New Haven Hospital, Inc.](#), 138 Conn. App. 93, 50 A.3d 910 (2012).
Expansion of exclusivity provisions
Alaska—[Schiel v. Union Oil Co. of California](#), 219 P.3d 1025 (Alaska 2009).
Exception for intentional or deliberate acts
Mont.—[Alexander v. Bozeman Motors, Inc.](#), 2010 MT 135, 356 Mont. 439, 234 P.3d 880 (2010).
Ohio—[Stetter v. R.J. Corman Derailment Servs., L.L.C.](#), 125 Ohio St. 3d 280, 2010-Ohio-1029, 927 N.E.2d 1092 (2010).
Differing standards of exclusivity
A workers' compensation act's differing standards of exclusivity in coverage between employers and employees, encompassing employees injured by an employer's willful negligence but not employees injured by their own willful negligence, is not a due process violation, being rationally based on the distinct standing of employers and employees in relation to the common undertaking coverage.

Neb.—Estate of Teague by and through Martinosky v. Crossroads Cooperative Association, 286 Neb. 1, 834 N.W.2d 236 (2013).

Neb.—Estate of Teague by and through Martinosky v. Crossroads Cooperative Association, 286 Neb. 1, 834 N.W.2d 236 (2013).

Joint and several liability

Cal.—Select Personnel Services v. W.C.A.B. (Ibarra), 78 Cal. Comp. Cas. (MB) 804, 2013 WL 3315599 (App. 4th Dist. 2013), denying writ.

Statutory employers

Colo.—Snook v. Joyce Homes, Inc., 215 P.3d 1210 (Colo. App. 2009).

La.—Johnson v. Motiva Enterprises LLC, 128 So. 3d 483 (La. Ct. App. 5th Cir. 2013), writ denied, 132 So. 3d 966 (La. 2014).

Employer classifications

Pa.—Grimaud v. Pennsylvania Ins. Dept., 995 A.2d 391 (Pa. Commw. Ct. 2010).

Conn.—Mehan v. City of Stamford, 127 Conn. App. 619, 15 A.3d 1122 (2011).

Wage loss standards

Mont.—Goble v. Montana State Fund, 2014 MT 99, 374 Mont. 453, 325 P.3d 1211 (2014).

D.C.—Washington Hosp. Center v. District of Columbia Dept. of Employment Services, 983 A.2d 961 (D.C. 2009).

Injury or disability schedules

Kan.—Hall v. Dillon Companies, Inc., 286 Kan. 777, 189 P.3d 508 (2008).

Less than minimum wage

N.M.—Casillas v. S.W.I.G., 96 N.M. 84, 1981-NMCA-045, 628 P.2d 329 (Ct. App. 1981).

Mont.—Powell v. State Compensation Ins. Fund, 2000 MT 321, 302 Mont. 518, 15 P.3d 877 (2000).

Offsets of Social Security benefits

Colo.—Meyer v. Industrial Commission of Colorado, 644 P.2d 46 (Colo. App. 1981).

N.Y.—Raynor v. Landmark Chrysler, 18 N.Y.3d 48, 936 N.Y.S.2d 63, 959 N.E.2d 1011 (2011).

N.Y.—Held v. State, Workers' Compensation Bd., 85 A.D.3d 35, 921 N.Y.S.2d 674 (3d Dep't 2011).

La.—Church Mut. Ins. Co. v. Dardar, 145 So. 3d 271 (La. 2014).

N.Y.—Kigin v. State of New York Workers' Compensation Bd., 24 N.Y.3d 459, 999 N.Y.S.2d 800, 24 N.E.3d 1064 (2014).

S.C.—South Carolina Ambulatory Surgery Center Ass'n v. South Carolina Workers' Compensation Com'n, 389 S.C. 380, 699 S.E.2d 146 (2010).

Tex.—Vista Healthcare, Inc. v. Texas Mut. Ins. Co., 324 S.W.3d 264 (Tex. App. Austin 2010).

Tenn.—Mansell v. Bridgestone Firestone North American Tire, LLC, 417 S.W.3d 393 (Tenn. 2013).

N.M.—Livingston v. Loffland Bros. Co., 86 N.M. 375, 1974-NMCA-047, 524 P.2d 991 (Ct. App. 1974).

Ga.—Barzey v. City of Cuthbert, 295 Ga. 641, 763 S.E.2d 447 (2014).

Limits for nondependent parent

Mont.—Walters v. Flathead Concrete Products, Inc., 2011 MT 45, 359 Mont. 346, 249 P.3d 913 (2011).

Alaska—Trudell v. Hibbert, 299 P.3d 1279 (Alaska 2013).

Neb.—Heesch v. Swimtastic Swim School, 20 Neb. App. 260, 823 N.W.2d 211 (2012).

Contingency fee disclosure required

Idaho—Cheung v. Pena, 143 Idaho 30, 137 P.3d 417 (2006).

Fee may reduce subrogation value

Ky.—AIK Selective Self-Insurance Fund v. Minton, 192 S.W.3d 415 (Ky. 2006).

Fee irrelevant to grounds for settlement

Pa.—Seitzinger v. Com., 25 A.3d 1299 (Pa. Commw. Ct. 2011), aff'd, 617 Pa. 597, 54 A.3d 20 (2012).

Fee limitations rational

N.M.—Wagner v. AGW Consultants, 2005-NMSC-016, 137 N.M. 734, 114 P.3d 1050 (2005).

Ga.—Performance Food Group, Inc. v. Williams, 300 Ga. App. 831, 686 S.E.2d 437 (2009).

Ohio—Groch v. Gen. Motors Corp., 117 Ohio St. 3d 192, 2008-Ohio-546, 883 N.E.2d 377 (2008).

Ohio—Modzelewski v. Yellow Freight Sys., Inc., 102 Ohio St. 3d 192, 2004-Ohio-2365, 808 N.E.2d 381 (2004).

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

2. Liability for Personal Injuries

b. Workers' Compensation Acts

§ 2379. Procedural requirements

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4186

The requirements of procedural due process apply to proceedings in workers' compensation cases, particularly notice, an opportunity to be heard, and review.

The requirements of procedural due process apply to proceedings in workers' compensation cases,¹ measured against a goal of fundamental fairness,² and due process is not denied by placing adjudicative questions in the hands of an administrative body subject to judicial review.³

Within the constraints of due process, the legislature may grant the workers' compensation administrative body the power to prescribe its own rules and related procedure,⁴ and due process requires the administrative body to follow procedural due process principles in conducting its claim administration duties.⁵

In workers' compensation proceedings, as in all other proceedings of an adjudicatory nature, due process requires proper notice,⁶ the opportunity to be heard⁷ at a meaningful time, and in a meaningful manner,⁸ including the opportunity to present evidence and cross-examine witnesses,⁹ without adherence to the formal rules of evidence applicable in judicial proceedings,¹⁰ and certain evidentiary presumptions may apply.¹¹

Informal proceedings are permissible on certain issues, without full evidentiary hearings, when full review is available.¹² A reduction¹³ or discontinuance of benefits on prescribed criteria is permissible prior to an evidentiary hearing when pretermination safeguards and posttermination remedies are provided.¹⁴

Because due process rights are implicated, a party in a workers' compensation proceeding has a right to rely on the issues as framed in the pretrial statement, when required,¹⁵ and the administrative judge may not consider matters not raised in the parties' pretrial stipulation.¹⁶ Due process is not denied by the failure to rule on an issue, even when the issue is within the scope of the issues noticed for the hearing, if other dispositions of the case render the ruling unnecessary.¹⁷

An applicant for workers' compensation benefits is denied due process if denied the right to be represented by counsel at the hearing,¹⁸ and due process requires a hearing when requested on a question of counsel fees.¹⁹

Administrative and judicial review.

In workers' compensation proceedings, due process standards apply to providing for administrative review²⁰ and judicial review.²¹ Due process is violated by a requirement that indigent workers' compensation claimants prepay the fee for an independent medical examination before obtaining either administrative or judicial review of the adverse decision of a treating physician regarding the termination of temporary disability benefits and medical treatment.²²

CUMULATIVE SUPPLEMENT

Cases:

Workers' compensation claimant was not deprived of due process at disqualification hearing, which was held to determine whether claimant violated Workers' Compensation Law by knowingly making false representation regarding his income for purpose of obtaining wage replacement benefits; claimant and his attorney were informed prior to the hearing that there was issue of whether claimant violated Workers' Compensation Law based on his criminal sale of controlled substance, claimant was represented by same counsel throughout the proceedings, and claimant was provided with ample opportunity at hearing to address the issue of whether he knowingly misrepresented material facts. [U.S.C.A. Const.Amend. 14](#); [McKinney's Workers' Compensation Law § 114-a\(1\)](#). [Adams v. Blackhorse Carriers, Inc.](#), 142 A.D.3d 1273, 38 N.Y.S.3d 285 (3d Dep't 2016).

[END OF SUPPLEMENT]

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Footnotes

1

Conn.—[Testone v. C.R. Gibson Co.](#), 114 Conn. App. 210, 969 A.2d 179 (2009).

D.C.—[Brown v. District of Columbia Dept. of Employment Services](#), 83 A.3d 739 (D.C. 2014).

Ga.—[Brasher v. U.S. Xpress Enterprises, Inc.](#), 328 Ga. App. 20, 761 S.E.2d 448 (2014).

Miss.—*Pulliam v. Mississippi State Hudspeth Regional Center*, 147 So. 3d 864 (Miss. Ct. App. 2014).
 Okla.—*Central State Community Service v. Anderson*, 2012 OK CIV APP 110, 292 P.3d 36 (Div. 1 2012).
 Conn.—*Passalugo v. Guida-Seibert Dairy Co.*, 149 Conn. App. 478, 91 A.3d 475 (2014).

Terms of approval of settlement

Pa.—*Seitzinger v. Com.*, 25 A.3d 1299 (Pa. Commw. Ct. 2011), *aff'd*, 617 Pa. 597, 54 A.3d 20 (2012).

U.S.—*Hawkins v. Bleakly*, 243 U.S. 210, 37 S. Ct. 255, 61 L. Ed. 678 (1917).

Qualification of commission

There is no due process requirement that industrial commission members be attorneys.

Mo.—*Medrano v. Marshall Elec. Contracting Inc.*, 173 S.W.3d 333 (Mo. Ct. App. W.D. 2005).

Neb.—*Contreras v. T.O. Haas, LLC*, 22 Neb. App. 276, 852 N.W.2d 339 (2014).

Miss.—*Pulliam v. Mississippi State Hudspeth Regional Center*, 147 So. 3d 864 (Miss. Ct. App. 2014).

D.C.—*Brown v. District of Columbia Dept. of Employment Services*, 83 A.3d 739 (D.C. 2014).

Ga.—*Brasher v. U.S. Xpress Enterprises, Inc.*, 328 Ga. App. 20, 761 S.E.2d 448 (2014).

Notice of rights at hearing

Conn.—*Testone v. C.R. Gibson Co.*, 114 Conn. App. 210, 969 A.2d 179 (2009).

Notice of issues to be determined

Fla.—*School Dist. of Hillsborough County/Broadspire v. Dickson*, 67 So. 3d 1080 (Fla. 1st DCA 2011).

Lack of notice denies due process

Fla.—*San Pedro v. Taco Bell/YumA Brands*, 12 So. 3d 814 (Fla. 1st DCA 2009).

La.—*Roman v. LRASIF Claims Management*, 81 So. 3d 895 (La. Ct. App. 5th Cir. 2011).

Conn.—*Flamenco v. Independent Refuse Service, Inc.*, 130 Conn. App. 280, 22 A.3d 671 (2011).

Ga.—*Brasher v. U.S. Xpress Enterprises, Inc.*, 328 Ga. App. 20, 761 S.E.2d 448 (2014).

La.—*Roman v. LRASIF Claims Management*, 81 So. 3d 895 (La. Ct. App. 5th Cir. 2011).

Okla.—*Central State Community Service v. Anderson*, 2012 OK CIV APP 110, 292 P.3d 36 (Div. 1 2012).

Not required on managed care decisions

N.D.—*Whedbee v. North Dakota Workforce Safety & Ins. Fund*, 2014 ND 79, 845 N.W.2d 632 (N.D. 2014).

Conn.—*Flamenco v. Independent Refuse Service, Inc.*, 130 Conn. App. 280, 22 A.3d 671 (2011).

La.—*Johnson v. Motiva Enterprises LLC*, 128 So. 3d 483 (La. Ct. App. 5th Cir. 2013), *writ denied*, 132 So. 3d 966 (La. 2014).

N.Y.—*Kigin v. State of New York Workers' Compensation Bd.*, 24 N.Y.3d 459, 999 N.Y.S.2d 800, 24 N.E.3d 1064 (2014).

True hearing denied by informal reconstruction

S.C.—*Adams v. H.R. Allen, Inc.*, 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012).

Ill.—*RG Const. Services v. Workers' Compensation*, 2014 IL App (1st) 132137WC, 388 Ill. Dec. 643, 24 N.E.3d 923 (App. Ct. 1st Dist. 2014).

Kan.—*Doe v. Kansas Dept. of Human Resources*, 277 Kan. 795, 90 P.3d 940 (2004).

Right to call witnesses

Fla.—*Russ v. Brooksville Health Care Ctr.*, 109 So. 3d 1266 (Fla. 1st DCA 2013).

Right to cross-examine witnesses

Conn.—*Testone v. C.R. Gibson Co.*, 114 Conn. App. 210, 969 A.2d 179 (2009).

Right to introduce medical expert evidence

Okla.—*Central State Community Service v. Anderson*, 2012 OK CIV APP 110, 292 P.3d 36 (Div. 1 2012).

Conn.—*Flamenco v. Independent Refuse Service, Inc.*, 130 Conn. App. 280, 22 A.3d 671 (2011).

Admission of medical reports

Ill.—*RG Const. Services v. Workers' Compensation*, 2014 IL App (1st) 132137WC, 388 Ill. Dec. 643, 24 N.E.3d 923 (App. Ct. 1st Dist. 2014).

Utah—*Certified Bldg. Maintenance v. Labor Com'n, Appeals Bd. of Labor Com'n*, 2012 UT App 240, 285 P.3d 831 (Utah Ct. App. 2012).

Conn.—*Mehan v. City of Stamford*, 127 Conn. App. 619, 15 A.3d 1122 (2011).

Tenn.—*Mansell v. Bridgestone Firestone North American Tire, LLC*, 417 S.W.3d 393 (Tenn. 2013).

Conn.—*Passalugo v. Guida-Seibert Dairy Co.*, 149 Conn. App. 478, 91 A.3d 475 (2014).

R.I.—*City of Pawtucket v. Pimental*, 960 A.2d 981 (R.I. 2008).

Conn.—*Pagan v. Carey Wiping Materials Corp.*, 144 Conn. App. 413, 73 A.3d 784 (2013), *certification denied*, 310 Conn. 925, 77 A.3d 142 (2013).

Notice of benefits termination on medical report

N.D.—[Brockel v. North Dakota Workforce Safety & Ins.](#), 2014 ND 26, 843 N.W.2d 15 (N.D. 2014).

15 Fla.—[Franklin v. Riviera Beach Fire Rescue](#), 132 So. 3d 1219 (Fla. 1st DCA 2014).

16 Fla.—[Knight v. Walgreens](#), 109 So. 3d 1224 (Fla. 1st DCA 2013).

17 Idaho—[Gomez v. Dura Mark, Inc.](#), 152 Idaho 597, 272 P.3d 569 (2012).

18 La.—[Davis v. Dunn & Bush Const.](#), 859 So. 2d 155 (La. Ct. App. 1st Cir. 2003).

19 Fla.—[Russ v. Brooksville Health Care Ctr.](#), 109 So. 3d 1266 (Fla. 1st DCA 2013).

Opportunity to contest provided

Ill.—[Aurora East School Dist. v. Dover](#), 363 Ill. App. 3d 1048, 301 Ill. Dec. 298, 846 N.E.2d 623 (2d Dist. 2006).

Insurer's right regarding subrogation fees

Neb.—[Heesch v. Swimtastic Swim School](#), 20 Neb. App. 260, 823 N.W.2d 211 (2012).

20 Ark.—[Wright v. Conway Freight](#), 2014 Ark. App. 451, 441 S.W.3d 45 (2014).

Kan.—[Doe v. Kansas Dept. of Human Resources](#), 277 Kan. 795, 90 P.3d 940 (2004).

21 Tenn.—[Randstad North America, L.P. v. Tennessee Dept. of Labor and Workforce Development](#), 372 S.W.3d 98 (Tenn. Ct. App. 2011).

Infringement cured by judicial review

Mont.—[Williams Insulation Co., Inc. v. Department of Labor and Industry](#), 2003 MT 72, 314 Mont. 523, 67 P.3d 262 (2003).

Official notice of deficient appeal required

Miss.—[Brown v. Robinson Property Group, L.P.](#), 24 So. 3d 320 (Miss. Ct. App. 2009).

22 Colo.—[Whiteside v. Smith](#), 67 P.3d 1240 (Colo. 2003).

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16D C.J.S. Constitutional Law § 2380

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

3. Liability for Criminal or Civil Forfeiture, Penalty, or Damages

§ 2380. General standards and principles

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4078, 4426, 4427

The imposition of reasonable penalties, forfeitures, or damages is subject to due process requirements but does not violate due process if rationally based and if adequate procedural protections are afforded.

Criminal¹ or civil forfeiture implicates due process protections,² and requires strict compliance with procedural rules to safeguard due process rights,³ including notice and the opportunity to be heard.⁴ An agency violates due process when it prescribes and enforces forfeitures of property without underlying statutory authority and competent procedural protections.⁵ Civil forfeiture proceedings are not dependent on the conduct of parallel criminal actions and need not be stayed pending their outcome.⁶ Due process requires a nexus between specific property sought for forfeiture and the owner's offense for which forfeiture is sought, but the requirement does not extend to all the property sought as subject to forfeiture, and the forfeiture of substitute property is permissible, provided the governing provision is rationally related to the state's legitimate punitive, remedial, and corrective purposes.⁷

Adherence to due process is also required for the imposition of civil penalties,⁸ punitive or other civil damages,⁹ or other civil sanctions,¹⁰ which cannot be irrational,¹¹ grossly excessive, arbitrary, shocking to the conscience or demonstrating passion or prejudice, or so severe and oppressive as to be wholly disproportionate to the offense,¹² or so extreme in character as probably to prevent resort to the courts to test the validity of the statute or the constitution.¹³

Vesting the responsibility for the imposition of civil fines in an administrative body or official is not, in itself, a due process violation,¹⁴ and the legislature may provide that a particular punishment will be inflicted by a proceeding in a civil action.¹⁵

Right to counsel.

There is no due process right to the appointment of counsel in a forfeiture asset seizure proceeding for substitute assets subject to a prior forfeiture sentence since the seizure does not increase the punishment beyond the original sentence.¹⁶ A federal drug forfeiture statute authorizing a district court to enter a pretrial order freezing assets in the defendant's possession, even when the defendant seeks to use those assets to pay an attorney, does not violate due process.¹⁷

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Footnotes

- 1 U.S.—U.S. v. Walsh, 712 F.3d 119 (2d Cir. 2013); Booker v. City of Saint Paul, 762 F.3d 730 (8th Cir. 2014); U.S. v. Guillen-Cervantes, 748 F.3d 870 (9th Cir. 2014); U.S. v. Duboc, 694 F.3d 1223 (11th Cir. 2012), cert. denied, 133 S. Ct. 1278, 185 L. Ed. 2d 214 (2013).
Pa.—Com. v. All That Certain Lot or Parcel of Land Located at 605 University Drive, 104 A.3d 411 (Pa. 2014).
Preindictment caveat on property
U.S.—U.S. v. Clark, 717 F.3d 790 (10th Cir. 2013).
- 2 U.S.—U.S. v. James Daniel Good Real Property, 510 U.S. 43, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993); U.S. v. Smith, 656 F.3d 821 (8th Cir. 2011); Gang Luan v. U.S., 722 F.3d 388 (D.C. Cir. 2013); U.S. v. 8 Gilcrease Lane, Quincy, Fla. 32351, 638 F.3d 297, 79 Fed. R. Serv. 3d 138 (D.C. Cir. 2011).
Pa.—Com. v. All That Certain Lot or Parcel of Land Located at 605 University Drive, 104 A.3d 411 (Pa. 2014).
Tenn.—State v. Sprunger, 2015 WL 1058222 (Tenn. 2015).
Wyo.—In re U.S. Currency Totaling \$7,209.00, 2012 WY 75, 278 P.3d 234 (Wyo. 2012).
- 3 Cal.—Cuevas v. Superior Court, 221 Cal. App. 4th 1312, 165 Cal. Rptr. 3d 325 (5th Dist. 2013), as modified on other grounds on denial of reh'g, (Dec. 24, 2013).
Tenn.—State v. Sprunger, 2015 WL 1058222 (Tenn. 2015).
Due process requires strict interpretation
Fla.—In re Forfeiture of: £1992 Pontiac Firebird No. 1G2FS23T3NL212004, 47 So. 3d 344 (Fla. 2d DCA 2010).
- 4 § 2381.
- 5 U.S.—Nevada Dept. of Corrections v. Greene, 648 F.3d 1014 (9th Cir. 2011).
- 6 U.S.—U.S. v. 8 Gilcrease Lane, Quincy, Fla. 32351, 638 F.3d 297, 79 Fed. R. Serv. 3d 138 (D.C. Cir. 2011).
- 7 U.S.—U.S. v. Smith, 656 F.3d 821 (8th Cir. 2011).
- 8 U.S.—Vanderbilt Mortg. and Finance, Inc. v. Flores, 692 F.3d 358 (5th Cir. 2012); Big Ridge, Inc. v. Federal Mine Safety and Health Review Com'n, 715 F.3d 631 (7th Cir. 2013); Humanitarian Law Project v. U.S. Treasury Dept., 578 F.3d 1133 (9th Cir. 2009); Howmet Corp. v. E.P.A., 614 F.3d 544 (D.C. Cir. 2010).
Cal.—People v. Sarpas, 225 Cal. App. 4th 1539, 172 Cal. Rptr. 3d 25 (4th Dist. 2014).
N.M.—Atherton v. Gopin, 2015-NMCA-003, 340 P.3d 630 (N.M. Ct. App. 2014), cert. granted, 344 P.3d 988 (N.M. 2014).

- N.Y.—D'Alessandro, ex rel. Vallemario Properties, LLC v. Kirkmire, 125 A.D.3d 1309, 3 N.Y.S.3d 216 (4th Dep't 2015).
- Wash.—Johnson v. City of Seattle, 184 Wash. App. 8, 335 P.3d 1027 (Div. 1 2014).
- 9 U.S.—Turley v. ISG Lackawanna, Inc., 774 F.3d 140 (2d Cir. 2014); Wellogix, Inc. v. Accenture, L.L.P., 716 F.3d 867, 91 Fed. R. Evid. Serv. 499 (5th Cir. 2013); Ondrisek v. Hoffman, 698 F.3d 1020 (8th Cir. 2012), cert. denied, 133 S. Ct. 1820, 185 L. Ed. 2d 814 (2013); Jones v. United Parcel Service, Inc., 674 F.3d 1187, 81 Fed. R. Serv. 3d 1176 (10th Cir. 2012).
- Ill.—Goldfine v. Barack, Ferrazzano, Kirschbaum & Perlman, 2014 IL 116362, 385 Ill. Dec. 339, 18 N.E.3d 884 (Ill. 2014).
- Wis.—Kimble v. Land Concepts, Inc., 2014 WI 21, 353 Wis. 2d 377, 845 N.W.2d 395 (2014), cert. denied, 135 S. Ct. 359, 190 L. Ed. 2d 251 (2014).
- Damages provision not vague**
- U.S.—Harris v. Mexican Specialty Foods, Inc., 564 F.3d 1301, 51 A.L.R. Fed. 2d 677 (11th Cir. 2009).
- 10 U.S.—Prosser v. C.I.R., 777 F.3d 582 (2d Cir. 2015); StreetEasy, Inc. v. Chertok, 752 F.3d 298, 88 Fed. R. Serv. 3d 1219 (2d Cir. 2014); McLaughlin v. Phelan Hallinan & Schmieg, LLP, 756 F.3d 240 (3d Cir. 2014), cert. denied, 135 S. Ct. 487, 190 L. Ed. 2d 360 (2014); U.S. v. Melot, 768 F.3d 1082 (10th Cir. 2014).
- Del.—Cohen v. State ex rel. Stewart, 89 A.3d 65 (Del. 2014).
- La.—Alpine Meadows, L.C. v. Winkler, 154 So. 3d 747 (La. Ct. App. 2d Cir. 2014).
- N.C.—Green v. Green, 763 S.E.2d 540 (N.C. Ct. App. 2014).
- 11 U.S.—Hudson v. U.S., 522 U.S. 93, 118 S. Ct. 488, 139 L. Ed. 2d 450, 162 A.L.R. Fed. 737 (1997).
- 12 §§ 2383 to 2385.
- 13 U.S.—Oklahoma Gin Co. v. State of Okl., 252 U.S. 339, 40 S. Ct. 341, 64 L. Ed. 600 (1920); Wadley Southern Ry. Co. v. State of Georgia, 235 U.S. 651, 35 S. Ct. 214, 59 L. Ed. 405 (1915).
- 14 U.S.—Lloyd Sabaudo Societa Anonima Per Azioni v. Elting, 287 U.S. 329, 53 S. Ct. 167, 77 L. Ed. 341 (1932); Howmet Corp. v. E.P.A., 614 F.3d 544 (D.C. Cir. 2010).
- 15 U.S.—St. Louis, I.M. & S. Ry. Co. v. Williams, 251 U.S. 63, 40 S. Ct. 71, 64 L. Ed. 139 (1919).
- 16 U.S.—U.S. v. Saccoccia, 564 F.3d 502 (1st Cir. 2009).
- 17 U.S.—U.S. v. Monsanto, 491 U.S. 600, 109 S. Ct. 2657, 105 L. Ed. 2d 512 (1989).

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16D C.J.S. Constitutional Law § 2381

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

3. Liability for Criminal or Civil Forfeiture, Penalty, or Damages

§ 2381. Notice and hearing requirements

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4078, 4426, 4427

In penalty and forfeiture cases, the required notice and hearing must comply with due process requirements.

Before forcing a person to satisfy a debt by forfeiting property, due process requires government to provide adequate notice of the impending taking.¹ With respect to forfeitures, before title can be extinguished, the owner or claimant must be notified² and given an opportunity for a hearing³ as may be sufficiently provided by a postrestraint⁴ or postdeprivation hearing.⁵ The government, not the claimant, bears the burden of establishing compliance with the due process prerequisites to forfeiture.⁶

The Due Process Clause does not require that the government perform heroic efforts to provide notice of a forfeiture proceeding; rather, it requires only that the government's effort be reasonably calculated to apprise a party of the pendency of the action, and the criterion is not the possibility of conceivable injury but the just and reasonable character of the requirement.⁷ Notice need not precede the seizure or restraint, provided the remaining safeguards are afforded,⁸ except that, with respect to a forfeiture of real property, notice prior to seizure is required when a postseizure challenge by the owner may not be sufficient to protect the owner's rights and the government has adequate alternative ways of protecting its interests.⁹

The authority for administrative procedures related to the return of property seized for forfeiture, when published and generally available, constitutes notice of the procedures without a due process requirement of individualized notice.¹⁰

Due process requires adequate notice and an opportunity to be heard prior to the imposition of civil penalties.¹¹ The substance of a provision for the imposition of penalties for a violation of the provision must include adequate notice of the rule,¹² providing fair warning of the conduct prohibited by the provision that makes the penalty possible.¹³ In the context of agency proceedings, an agency may fail to give sufficient fair notice to justify a penalty, and thus violate due process, if the regulation at issue is so ambiguous that a regulated party cannot be expected to arrive at the correct interpretation using standard tools of legal interpretation, the party must therefore look to the agency for guidance, and the agency fails to articulate its interpretation before imposing a penalty.¹⁴

Due process requires adequate notice and an opportunity to be heard prior to the infliction of sanctions.¹⁵ In sanction proceedings, notice must include not only the conduct alleged as subject to sanctions but also the standard by which the conduct will be assessed.¹⁶ Imposing sanctions without a hearing does not necessarily violate due process if the objectionable conduct took place in the court's presence.¹⁷

Punitive or exemplary damages.

A grossly excessive punitive damages award is considered a due process violation specifically because the subjected party does not have fair notice of exposure to the extent of punishment that may be imposed.¹⁸ Statutes authorizing awards of punitive damages must, in compliance with due process, give fair notice of the damages that may be awarded.¹⁹ Notice of a precise amount, however, is not required, as the judicial function is to police a range of the penalty, not a point.²⁰ In determining adequate notice of the magnitude of punitive damages that might be imposed, as required by due process, a court considers the degree of reprehensibility of the defendant's conduct, the ratio of the punitive damages award to the actual or potential harm inflicted on plaintiff, and a comparison of the punitive damages award with the civil or criminal penalties that could be imposed for comparable misconduct.²¹

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Footnotes

- 1 U.S.—*Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).
- 2 U.S.—*Dusenbery v. U.S.*, 534 U.S. 161, 122 S. Ct. 694, 151 L. Ed. 2d 597 (2002); U.S. v. *James Daniel Good Real Property*, 510 U.S. 43, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993); U.S. v. *Duboc*, 694 F.3d 1223 (11th Cir. 2012), cert. denied, 133 S. Ct. 1278, 185 L. Ed. 2d 214 (2013).
Reasonably calculated to apprise
U.S.—*Bailey v. U.S.*, 508 F.3d 736 (5th Cir. 2007).
Adequate notice at sentencing
U.S.—*U.S. v. Smith*, 656 F.3d 821 (8th Cir. 2011).
Certified mail and publication sufficient
U.S.—*Conard v. U.S.*, 470 Fed. Appx. 336 (5th Cir. 2012).
Actual notice not required
U.S.—*U.S. v. Davenport*, 668 F.3d 1316 (11th Cir. 2012).
Multiple state notice provisions
Cal.—*Cuevas v. Superior Court*, 221 Cal. App. 4th 1312, 165 Cal. Rptr. 3d 325 (5th Dist. 2013), as modified on other grounds on denial of reh'g, (Dec. 24, 2013).

- 3 U.S.—*Degen v. U.S.*, 517 U.S. 820, 116 S. Ct. 1777, 135 L. Ed. 2d 102 (1996); *U.S. v. James Daniel Good Real Property*, 510 U.S. 43, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993); *U.S. v. Walsh*, 712 F.3d 119 (2d Cir. 2013); *U.S. v. Duboc*, 694 F.3d 1223 (11th Cir. 2012), cert. denied, 133 S. Ct. 1278, 185 L. Ed. 2d 214 (2013).
No right after voluntary forfeiture
U.S.—*U.S. v. 8 Gilcrease Lane, Quincy, Fla.* 32351, 638 F.3d 297, 79 Fed. R. Serv. 3d 138 (D.C. Cir. 2011).
Statute did not allow answer to verified complaint
Iowa—*In re Young*, 780 N.W.2d 726 (Iowa 2010).
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Validity and construction of provisions of Uniform Controlled Substances Act providing for forfeiture hearing before law enforcement officer, 84 A.L.R.4th 637.
- 4 U.S.—*U.S. v. Walsh*, 712 F.3d 119 (2d Cir. 2013).
- 5 U.S.—*Booker v. City of Saint Paul*, 762 F.3d 730 (8th Cir. 2014); *U.S. v. Clark*, 717 F.3d 790 (10th Cir. 2013).
Ill.—*People v. 1998 Ford Explorer*, 399 Ill. App. 3d 99, 339 Ill. Dec. 524, 926 N.E.2d 999 (2d Dist. 2010).
- 6 U.S.—*U.S. v. Erpenbeck*, 682 F.3d 472 (6th Cir. 2012).
- 7 U.S.—*Dusenbery v. U.S.*, 534 U.S. 161, 122 S. Ct. 694, 151 L. Ed. 2d 597 (2002).
- 8 U.S.—*U.S. v. Clark*, 717 F.3d 790 (10th Cir. 2013); *Lord Abbett Mun. Income Fund, Inc. v. Tyson*, 671 F.3d 1203 (11th Cir. 2012).
- 9 U.S.—*U.S. v. James Daniel Good Real Property*, 510 U.S. 43, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993).
- 10 U.S.—*Gates v. City of Chicago*, 623 F.3d 389 (7th Cir. 2010).
- 11 U.S.—*Lambert v. People of the State of California*, 355 U.S. 225, 78 S. Ct. 240, 2 L. Ed. 2d 228 (1957); *Karpova v. Snow*, 497 F.3d 262 (2d Cir. 2007).
Cal.—*People v. Sarpas*, 225 Cal. App. 4th 1539, 172 Cal. Rptr. 3d 25 (4th Dist. 2014).
N.Y.—*Chavis v. New York Temporary State Com'n on Lobbying*, 16 A.D.3d 886, 791 N.Y.S.2d 707 (3d Dep't 2005).
W. Va.—*Vanderbilt Mortg. and Finance, Inc. v. Cole*, 230 W. Va. 505, 740 S.E.2d 562 (2013).
Rights impaired as applied
Tex.—*Hartford Cas. Ins. Co. v. State*, 159 S.W.3d 212 (Tex. App. Austin 2005).
- 12 U.S.—*Howmet Corp. v. E.P.A.*, 614 F.3d 544 (D.C. Cir. 2010); *NetworkIP, LLC v. F.C.C.*, 548 F.3d 116 (D.C. Cir. 2008).
Not vague
Ill.—*In re Marriage of Chen and Ulner*, 354 Ill. App. 3d 1004, 290 Ill. Dec. 69, 820 N.E.2d 1136 (2d Dist. 2004).
- 13 U.S.—*Prosser v. C.I.R.*, 777 F.3d 582 (2d Cir. 2015).
Ill.—*Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 311 Ill. Dec. 951, 869 N.E.2d 964 (1st Dist. 2007).
S.C.—*Atkinson v. Orkin Exterminating Co., Inc.*, 361 S.C. 156, 604 S.E.2d 385 (2004).
Fair notice of prohibition required
U.S.—*U.S. v. Approximately 64,695 Pounds of Shark Fins*, 520 F.3d 976 (9th Cir. 2008).
- 14 U.S.—*Excel Corp. v. U.S. Department of Agri.*, 397 F.3d 1285 (10th Cir. 2005).
- 15 U.S.—*Lightspeed Media Corp. v. Smith*, 761 F.3d 699 (7th Cir. 2014); *U.S. v. Tillman*, 756 F.3d 1144 (9th Cir. 2014); *U.S. v. Melot*, 768 F.3d 1082 (10th Cir. 2014).
N.C.—*North Carolina State Bar v. Barrett*, 219 N.C. App. 481, 724 S.E.2d 126 (2012).
Inadequate notice and hearing
U.S.—*Manez v. Bridgestone Firestone North American Tire, LLC*, 533 F.3d 578 (7th Cir. 2008).
- 16 U.S.—*StreetEasy, Inc. v. Chertok*, 752 F.3d 298, 88 Fed. R. Serv. 3d 1219 (2d Cir. 2014); *U.S. v. Melot*, 768 F.3d 1082 (10th Cir. 2014).
Mere existence of rule is insufficient notice
U.S.—*McLaughlin v. Phelan Hallinan & Schmieg, LLP*, 756 F.3d 240 (3d Cir. 2014), cert. denied, 135 S. Ct. 487, 190 L. Ed. 2d 360 (2014).
- 17 U.S.—*U.S. v. Agosto-Vega*, 731 F.3d 62 (1st Cir. 2013).
- 18 Ariz.—*Desert Palm Surgical Group, P.L.C. v. Petta*, 236 Ariz. 568, 343 P.3d 438 (Ct. App. Div. 1 2015).
Cal.—*Bankhead v. ArvinMeritor, Inc.*, 205 Cal. App. 4th 68, 139 Cal. Rptr. 3d 849 (1st Dist. 2012), as modified, (Apr. 25, 2012).

Conn.—[R.I. Pools, Inc. v. Paramount Concrete, Inc.](#), 149 Conn. App. 839, 89 A.3d 993 (2014), certification denied, 312 Conn. 920, 94 A.3d 1200 (2014).

Mo.—[Lewellen v. Franklin](#), 441 S.W.3d 136 (Mo. 2014).

Ohio—[T.P. v. Weiss](#), 2013-Ohio-1402, 990 N.E.2d 1098 (Ohio Ct. App. 5th Dist. Delaware County 2013).

19

Cal.—[Pfeifer v. John Crane, Inc.](#), 220 Cal. App. 4th 1270, 164 Cal. Rptr. 3d 112 (2d Dist. 2013), as modified on other grounds on denial of reh'g, (Nov. 27, 2013) and review withdrawn, (Feb. 19, 2014).

Adequate notice in vulnerable persons statute

Or.—[Herring v. American Medical Response Northwest, Inc.](#), 255 Or. App. 315, 297 P.3d 9 (2013), review denied, 353 Or. 867, 306 P.3d 639 (2013).

20

Cal.—[Bullock v. Philip Morris USA, Inc.](#), 198 Cal. App. 4th 543, 131 Cal. Rptr. 3d 382 (2d Dist. 2011).

21

U.S.—[BMW of North America, Inc. v. Gore](#), 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996); [United Intern. Holdings, Inc. v. Wharf \(Holdings\) Ltd.](#), 210 F.3d 1207, 41 U.C.C. Rep. Serv. 2d 645 (10th Cir. 2000), judgment aff'd, 532 U.S. 588, 121 S. Ct. 1776, 149 L. Ed. 2d 845, 44 U.C.C. Rep. Serv. 2d 569 (2001).

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16D C.J.S. Constitutional Law § 2382

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

3. Liability for Criminal or Civil Forfeiture, Penalty, or Damages

§ 2382. Timeliness of forfeiture proceedings

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 4078

Due process requires that forfeiture proceedings against seized property be brought without unreasonable delay.

Due process requires that forfeiture proceedings against seized property be brought without unreasonable delay or with reasonable promptness.¹ The length of the delay is to some extent a triggering mechanism in determining whether the government's delay in bringing a judicial forfeiture action violates the right against deprivation of property without due process.² To determine whether a delay is unreasonable, the court balances four factors: (1) the length of the delay; (2) the reasons for the delay; (3) the timing of claimant's assertion of rights; and (4) prejudice to the claimant,³ predicated on the balancing test developed by decisional law to determine when government delay has abridged the right to a speedy trial,⁴ but these elements or factors are merely guides, and none of them is a necessary or sufficient condition for finding unnecessary delay.⁵ Delay in the institution of proceedings must be justified,⁶ as by the conduct or behavior of the subject party,⁷ or the need to further investigate a pending criminal proceeding before bringing the forfeiture action,⁸ particularly in the absence of prejudice.⁹ The claimant's failure to take advantage of available alternatives to recover the seized property runs contrary to a claim of prejudice from delay in the initiation of forfeiture proceedings.¹⁰

Before delay may be found to violate due process, the government must be allowed some time to decide whether to institute proceedings, and an important justification for delaying proceedings is to see whether the decision on the petition for remission of the forfeiture will obviate the need for judicial proceedings.¹¹

Whether or not the period between seizure of the property and the institution of the forfeiture proceedings amounts to a denial of due process depends on the facts and circumstances of the particular case¹² and especially on the cumulative particular facts.¹³

While due process may require the government to act promptly in ruling on petitions for remission or mitigation of forfeiture when the petitioner has a property right in the items which have been forfeited, a violation of this requirement is not constitutionally significant when there is no resulting prejudice to the owner.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

In the event there is a prolonged delay in initiating forfeiture proceedings, a claimant can challenge the reasonableness of the delay as a violation of due process. [U.S. Const. Amend. 5](#); [Serrano v. Customs and Border Patrol](#), [U.S. Customs and Border Protection](#), 975 F.3d 488 (5th Cir. 2020).

Even if four-year delay in government's civil asset forfeiture action against funds allegedly used or intended to be used to facilitate violation of Controlled Substances Act constituted prejudicial delay, it did not violate claimants' due process rights, where portion of delay was attributable to government's own legitimate criminal investigation, claimants' own contribution to delay was significant factor, claimants contributed materially in preventing any final outcome, and there were no negative effects of delay on claimants' defense. [U.S. Const. Amend. 5](#); [18 U.S.C.A. § 981](#); [Comprehensive Drug Abuse Prevention and Control Act of 1970 § 101](#), [21 U.S.C.A. § 801](#). [United States v. \\$307,970.00](#), in [U.S. Currency](#), 156 F. Supp. 3d 708, 93 Fed. R. Serv. 3d 1334 (E.D. N.C. 2016).

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Footnotes

¹ U.S.—[U.S. v. Eight Thousand Eight Hundred and Fifty Dollars \(\\$8,850\)](#) in [U.S. Currency](#), 461 U.S. 555, 103 S. Ct. 2005, 76 L. Ed. 2d 143 (1983); [U.S. v. Salti](#), 579 F.3d 656 (6th Cir. 2009); [U.S. v. Approximately \\$1.67 Million \(US\) in Cash, Stock and Other Valuable Assets Held by or at 1\) Total Aviation Ltd.](#), 513 F.3d 991 (9th Cir. 2008); [U.S. v. Duboc](#), 694 F.3d 1223 (11th Cir. 2012), cert. denied, 133 S. Ct. 1278, 185 L. Ed. 2d 214 (2013).

Miss.—[1984 Chevy Camaro v. Lawrence County Sheriff's Dept.](#), 148 So. 3d 672 (Miss. Ct. App. 2014).

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[Timeliness of institution of proceedings for forfeiture under Uniform Controlled Substances Act or similar statute](#), 90 A.L.R.4th 493.

[Delay between seizure of personal property by Federal Government and institution of proceedings for forfeiture thereof as violative of Fifth Amendment due process requirements](#), 69 A.L.R. Fed. 373.

² U.S.—[U.S. v. Salti](#), 579 F.3d 656 (6th Cir. 2009).

Particular time intervals

Property-forfeiture provisions were not unconstitutional as applied when the intervals from the date of seizure until the orders of forfeiture were only 211 days, 186 days, and 168 days.

- 3 Ill.—*People v. 1998 Ford Explorer*, 399 Ill. App. 3d 99, 339 Ill. Dec. 524, 926 N.E.2d 999 (2d Dist. 2010).
U.S.—*U.S. v. Eight Thousand Eight Hundred and Fifty Dollars (\$8,850) in U.S. Currency*, 461 U.S. 555, 103 S. Ct. 2005, 76 L. Ed. 2d 143 (1983); *U.S. v. Salti*, 579 F.3d 656 (6th Cir. 2009); *U.S. v. Approximately \$1.67 Million (US) in Cash, Stock and Other Valuable Assets Held by or at 1) Total Aviation Ltd.*, 513 F.3d 991 (9th Cir. 2008).
- 4 Ill.—*People v. One 1998 GMC*, 2011 IL 110236, 355 Ill. Dec. 900, 960 N.E.2d 1071 (Ill. 2011).
N.D.—*State v. Bergstrom*, 2006 ND 45, 710 N.W.2d 407 (N.D. 2006).
- 5 U.S.—*Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).
U.S.—*U.S. v. Eight Thousand Eight Hundred and Fifty Dollars (\$8,850) in U.S. Currency*, 461 U.S. 555, 103 S. Ct. 2005, 76 L. Ed. 2d 143 (1983); *U.S. v. Approximately \$1.67 Million (US) in Cash, Stock and Other Valuable Assets Held by or at 1) Total Aviation Ltd.*, 513 F.3d 991 (9th Cir. 2008).
- Test analogous to speedy trial**
Ill.—*People v. One 1998 GMC*, 2011 IL 110236, 355 Ill. Dec. 900, 960 N.E.2d 1071 (Ill. 2011).
S.C.—*Farmer v. Florence County Sheriff's Office*, 401 S.C. 606, 738 S.E.2d 473 (2013).
- 6 U.S.—*U.S. v. Salti*, 579 F.3d 656 (6th Cir. 2009); *U.S. v. Approximately \$1.67 Million (US) in Cash, Stock and Other Valuable Assets Held by or at 1) Total Aviation Ltd.*, 513 F.3d 991 (9th Cir. 2008); *Ancient Coin Collectors Guild v. U.S. Customs and Border Protection, Dept. of Homeland Sec.*, 801 F. Supp. 2d 383 (D. Md. 2011), *aff'd*, 698 F.3d 171 (4th Cir. 2012), *cert. denied*, 133 S. Ct. 1645, 185 L. Ed. 2d 619 (2013).
- Stay to prevent prejudice to investigation**
U.S.—*U.S. v. All Funds Deposited In Account No. 20008524845, First Union National Bank*, 162 F. Supp. 2d 1325 (D. Wyo. 2001).
- 7 U.S.—*U.S. v. Salti*, 579 F.3d 656 (6th Cir. 2009).
- 8 Ill.—*People v. One 1998 GMC*, 2011 IL 110236, 355 Ill. Dec. 900, 960 N.E.2d 1071 (Ill. 2011).
U.S.—*U.S. v. Approximately \$1.67 Million (US) in Cash, Stock and Other Valuable Assets Held by or at 1) Total Aviation Ltd.*, 513 F.3d 991 (9th Cir. 2008).
- 9 U.S.—*U.S. v. Zorrilla-Echevarria*, 671 F.3d 1 (1st Cir. 2011); *U.S. v. Salti*, 579 F.3d 656 (6th Cir. 2009); *U.S. v. Approximately \$1.67 Million (US) in Cash, Stock and Other Valuable Assets Held by or at 1) Total Aviation Ltd.*, 513 F.3d 991 (9th Cir. 2008); *U.S. v. Duboc*, 694 F.3d 1223 (11th Cir. 2012), *cert. denied*, 133 S. Ct. 1278, 185 L. Ed. 2d 214 (2013); *Ancient Coin Collectors Guild v. U.S. Customs and Border Protection, Dept. of Homeland Sec.*, 801 F. Supp. 2d 383 (D. Md. 2011), *aff'd*, 698 F.3d 171 (4th Cir. 2012), *cert. denied*, 133 S. Ct. 1645, 185 L. Ed. 2d 619 (2013).
- Must show defense hindered**
Ill.—*People v. One 1998 GMC*, 2011 IL 110236, 355 Ill. Dec. 900, 960 N.E.2d 1071 (Ill. 2011).
- 10 U.S.—*U.S. v. Approximately \$1.67 Million (US) in Cash, Stock and Other Valuable Assets Held by or at 1) Total Aviation Ltd.*, 513 F.3d 991 (9th Cir. 2008); *U.S. v. Duboc*, 694 F.3d 1223 (11th Cir. 2012), *cert. denied*, 133 S. Ct. 1278, 185 L. Ed. 2d 214 (2013).
- 11 U.S.—*U.S. v. Eight Thousand Eight Hundred and Fifty Dollars (\$8,850) in U.S. Currency*, 461 U.S. 555, 103 S. Ct. 2005, 76 L. Ed. 2d 143 (1983).
- 12 U.S.—*U.S. v. One 1951 Douglas DC-6 Aircraft*, 667 F.2d 502 (6th Cir. 1981).
- 13 U.S.—*U.S. v. Eight Thousand Eight Hundred and Fifty Dollars (\$8,850) in U.S. Currency*, 461 U.S. 555, 103 S. Ct. 2005, 76 L. Ed. 2d 143 (1983).
- 14 U.S.—*U.S. v. Von Neumann*, 474 U.S. 242, 106 S. Ct. 610, 88 L. Ed. 2d 587 (1986).

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16D C.J.S. Constitutional Law § 2383

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

3. Liability for Criminal or Civil Forfeiture, Penalty, or Damages

§ 2383. Amount and determination of civil penalty

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4426, 4427

Due process of law with respect to the imposition of civil penalties requires that the legislature prescribe the amount of the penalty, or some definite standard for fixing the amount, or else that the amount be determined in judicial proceedings instituted against the offender.

Due process limits the power of government to prescribe civil penalties for violations of law, requiring that the penalty prescribed must not be so severe and oppressive as to be wholly disproportionate to the offense and obviously unreasonable.¹ While the amount of the penalty is within the control of the legislature in the exercise of its police power,² this power is subject to the limitation that the amount must not be so grossly excessive as to constitute a deprivation of property without due process of law.³ A statute imposes a penalty, for due process purposes, only when (1) the costs imposed are unrelated to the amount of actual harm suffered and are related more to the penalized party's conduct, (2) the proceeds from infractions are collected by the state, rather than paid to the individual harmed, and (3) the statute is meant to address a harm to the public, as opposed to remedying a harm to an individual.⁴

The test for determining whether punitive damages awards are excessive in violation of due process, requiring a comparison of the punitive damages award with other civil penalties in comparable cases,⁵ is not applicable in determining whether a civil penalty is itself excessive.⁶

In determining whether a statutory scheme is so punitive either in purpose or effect as to transform what was clearly intended as a civil remedy into a criminal penalty, such that the civil penalties should carry the same due process guarantees as criminal offenses, courts consider (1) whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment-retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may be rationally connected may be assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned.⁷

Due process of law with respect to the imposition of penalties requires that the legislature must prescribe the amount of the penalty, or some definite standard for fixing the amount, or else that the amount must be determined in a judicial proceeding instituted against the offender.⁸

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Footnotes

- 1 U.S.—*Southwestern Telegraph & Telephone Co. v. Danaher*, 238 U.S. 482, 35 S. Ct. 886, 59 L. Ed. 1419 (1915); *Vanderbilt Mortg. and Finance, Inc. v. Flores*, 692 F.3d 358 (5th Cir. 2012).
S.C.—*State ex. rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, 2015 WL 775094 (S.C. 2015).
Maximum award under False Claim Act
U.S.—*Morse Diesel Intern., Inc. v. U.S.*, 79 Fed. Cl. 116 (2007).
- 2 U.S.—*St. Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 40 S. Ct. 71, 64 L. Ed. 139 (1919).
- 3 U.S.—*State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585, 60 Fed. R. Evid. Serv. 1349, 1 A.L.R. Fed. 2d 739 (2003).
- 4 U.S.—*Huaiyin Foreign Trade Corp. (30) v. U.S.*, 322 F.3d 1369 (Fed. Cir. 2003).
- 5 § 2385.
- 6 U.S.—*Vanderbilt Mortg. and Finance, Inc. v. Flores*, 692 F.3d 358 (5th Cir. 2012); *Morse Diesel Intern., Inc. v. U.S.*, 79 Fed. Cl. 116 (2007).
- 7 U.S.—*Humanitarian Law Project v. U.S. Treasury Dept.*, 578 F.3d 1133 (9th Cir. 2009).
- 8 Cal.—*Lackner v. St. Joseph Convalescent Hospital, Inc.*, 106 Cal. App. 3d 542, 165 Cal. Rptr. 198 (1st Dist. 1980).

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16D C.J.S. Constitutional Law § 2384

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

3. Liability for Criminal or Civil Forfeiture, Penalty, or Damages

§ 2384. Amount and determination of damages

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4427

Due process of law applies to preclude the imposition of civil damages when excessive or otherwise not rationally based.

Due process of law does not apply to limit statutory damage awards,¹ unless the award prescribed is so severe and oppressive as to be wholly disproportionate to the offense and obviously unreasonable,² and does not apply to limit liquidated damages under contracts.³

A statutory limitation on the amount of damage awards in particular types of cases may comply with due process when rationally based,⁴ but a statutory limitation on the amount of damage awards may violate due process if the limitation is harsh and unreasonable in relation to claimed damages⁵ or otherwise lacking a rational basis.⁶

Due process does apply to place the outer limits on the size of a civil damages award,⁷ precluding grossly excessive damage awards as an arbitrary deprivation of property without due process furthering no legitimate legislative purpose.⁸

An award may fail that test on the grounds that it is speculative and uncertain, as subject to a very large margin of error in the evidentiary estimates underlying the award.⁹ Likewise, due process is violated by the imposition of a damages award in the absence of any provable connection between the award and the harmful conduct of the defendant¹⁰ or when any causal link is purely speculative.¹¹

CUMULATIVE SUPPLEMENT

Cases:

It does not violate due process for a factfinder to calculate its own damages; whether that damages ruling should stand on appeal is a merits question, not a process one. [U.S. Const. Amend. 5. OJSC Ukrnafta v. Carpatsky Petroleum Corporation](#), 957 F.3d 487 (5th Cir. 2020).

It does not violate due process for a factfinder to calculate its own damages; whether that damages ruling should stand on appeal is a merits question, not a process one. [U.S. Const. Amend. 5. OJSC Ukrnafta v. Carpatsky Petroleum Corporation](#), 955 F.3d 465 (5th Cir. 2020), opinion withdrawn and superseded on reh'g, [2020 WL 2027817 \(5th Cir. 2020\)](#) and withdrawn from bound volume.

Rational basis test applied to analysis of constitutionality of damages caps under Florida Equal Protection Clause; they did not implicate either a suspect class or fundamental right. [West's F.S.A. Const. Art. 1, § 2; West's F.S.A. § 766.118. North Broward Hosp. Dist. v. Kalitan](#), 174 So. 3d 403 (Fla. 4th DCA 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[Matamoros v. Starbucks Corp.](#), 699 F.3d 129, 83 Fed. R. Serv. 3d 1396 (1st Cir. 2012); [Capitol Records, Inc. v. Thomas-Rasset](#), 692 F.3d 899 (8th Cir. 2012), cert. denied, 133 S. Ct. 1584, 185 L. Ed. 2d 578 (2013).
Wash.—[Akrie v. Grant](#), 178 Wash. App. 506, 315 P.3d 567 (Div. 1 2013), review granted, 180 Wash. 2d 1008, 325 P.3d 913 (2014).
- 2 U.S.—[Sony BMG Music Entertainment v. Tenenbaum](#), 719 F.3d 67 (1st Cir. 2013); [Vanderbilt Mortg. and Finance, Inc. v. Flores](#), 692 F.3d 358 (5th Cir. 2012); [Perez-Farias v. Global Horizons, Inc.](#), 499 Fed. Appx. 735 (9th Cir. 2012).
- 3 U.S.—[In re Late Fee and Over-Limit Fee Litigation](#), 741 F.3d 1022 (9th Cir. 2014), cert. denied, 134 S. Ct. 2878, 189 L. Ed. 2d 836 (2014).
- 4 U.S.—[Lansdale v. Hi-Health Supermart Corp.](#), 314 F.3d 355 (9th Cir. 2002); [M.D. v. U.S.](#), 745 F. Supp. 2d 1274 (M.D. Fla. 2010).
Fla.—[Vargas v. Enterprise Leasing Co.](#), 993 So. 2d 614 (Fla. 4th DCA 2008), decision approved, 60 So. 3d 1037 (Fla. 2011).
Iowa—[Channon v. United Parcel Service, Inc.](#), 629 N.W.2d 835 (Iowa 2001).
Neb.—[Connelly v. City of Omaha](#), 284 Neb. 131, 816 N.W.2d 742 (2012).
N.M.—[Salopek v. Friedman](#), 2013-NMCA-087, 308 P.3d 139 (N.M. Ct. App. 2013).
Tex.—[Mills v. Fletcher](#), 229 S.W.3d 765 (Tex. App. San Antonio 2007).
Utah—[Parks v. Utah Transit Authority](#), 2002 UT 55, 53 P.3d 473 (Utah 2002).
Limits on noneconomic or hedonic damages
U.S.—[M.D. v. U.S.](#), 745 F. Supp. 2d 1274 (M.D. Fla. 2010).
Colo.—[Scharrel v. Wal-Mart Stores, Inc.](#), 949 P.2d 89 (Colo. App. 1997).

Fla.—Weingrad v. Miles, 29 So. 3d 406 (Fla. 3d DCA 2010).

Mich.—Kenkel v. Stanley Works, 256 Mich. App. 548, 665 N.W.2d 490 (2003).

N.J.—Caviglia v. Royal Tours of America, 178 N.J. 460, 842 A.2d 125 (2004).

Ohio—Simpkins v. Grace Brethren Church of Delaware, 2014-Ohio-3465, 16 N.E.3d 687 (Ohio Ct. App. 5th Dist. Delaware County 2014).

As to damage limitations in particular contexts within due process, see §§ 2372 to 2375.

Wis.—Ferdon ex rel. Petrucelli v. Wisconsin Patients Compensation Fund, 2005 WI 125, 284 Wis. 2d 573, 701 N.W.2d 440 (2005).

Ohio—State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 1999-Ohio-123, 715 N.E.2d 1062 (1999).

Tex.—McCullough v. Scarbrough, Medlin & Associates, Inc., 435 S.W.3d 871 (Tex. App. Dallas 2014), review denied, (Oct. 10, 2014).

Cal.—Pfeifer v. John Crane, Inc., 220 Cal. App. 4th 1270, 164 Cal. Rptr. 3d 112 (2d Dist. 2013), as modified on other grounds on denial of reh'g, (Nov. 27, 2013) and review withdrawn, (Feb. 19, 2014).

Mass.—Rhodes v. AIG Domestic Claims, Inc., 461 Mass. 486, 961 N.E.2d 1067 (2012).

Tex.—McCullough v. Scarbrough, Medlin & Associates, Inc., 435 S.W.3d 871 (Tex. App. Dallas 2014), review denied, (Oct. 10, 2014).

Arbitrary award is violation

U.S.—Minks v. Polaris Industries, Inc., 546 F.3d 1364 (Fed. Cir. 2008).

No violation as excessive

U.S.—Virtual Studios, Inc. v. Beaulieu Group, LLC, 987 F. Supp. 2d 769 (E.D. Tenn. 2013).

Ill.—Avery v. State Farm Mut. Auto. Ins. Co., 216 Ill. 2d 100, 296 Ill. Dec. 448, 835 N.E.2d 801 (2005).

U.S.—Gibson v. American Cyanamid Co., 719 F. Supp. 2d 1031 (E.D. Wis. 2010).

U.S.—Osorio v. Dole Food Co., 665 F. Supp. 2d 1307 (S.D. Fla. 2009), aff'd, 635 F.3d 1277 (11th Cir. 2011).

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16D C.J.S. Constitutional Law § 2385

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

3. Liability for Criminal or Civil Forfeiture, Penalty, or Damages

§ 2385. Amount and determination of damages—Punitive damages

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 4427

Due process of law does not preclude the imposition of punitive damages in civil cases but grossly excessive or arbitrary awards violate due process as not rationally related to legitimate state interests.

Punitive damages are not per se in violation of the Due Process Clause,¹ but a punitive damage award may be so grossly excessive or arbitrary that it violates the due process guaranty,² as when the assessment shocks the conscience of the court or demonstrates passion or prejudice on the part of the trier of fact,³ when analyzed in relation to the state's legitimate interests in punishing unlawful conduct and deterring its repetition.⁴ It follows that a proper due process analysis of a punitive damages award requires first that court identify state's interest in deterring the relevant conduct and strength of that interest.⁵

In determining the constitutionality of a punitive damages award, general concerns of reasonableness and adequate guidance from the court when the case is tried to a jury properly enter into the constitutional calculus.⁶ Due process requires that adequate standards and controls be in place to prevent a punitive damages award from becoming an arbitrary deprivation of property.⁷

In practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process; while a higher ratio may be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine, when compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guaranty.⁸ An award that exceeds a single-digit ratio between punitive and compensatory damages may comply with due process when a particularly egregious act has resulted in only a small amount of economic damages.⁹

Factors a court considers in determining whether a punitive damage award against a tortfeasor is grossly disproportional to the gravity of offense, and thus violates due process, are the degree of the defendant's reprehensibility or culpability, the relationship between the penalty and harm to the victim caused by the defendant's actions, and the sanctions imposed in other cases for comparable misconduct.¹⁰ The most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct.¹¹ Additional factors are considered in assessing the reprehensibility of a defendant's conduct for purposes of determining the reasonableness of the award within due process constraints, including whether: (1) the harm caused was physical as opposed to economic; (2) the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; (3) the target of the conduct had financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, or mere accident.¹² The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award, and the absence of all of them renders any award suspect.¹³

A state constitutional provision prohibiting judicial review of the amount of punitive damages awarded by a jury "unless the court can affirmatively say there is no evidence to support the verdict" violates the Due Process Clause.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Punitive damages award of \$280 million to developer of electronic-health-record software for competitor's unlawful access and use of developer's confidential information and trade secrets was excessive in violation of due process, even though competitor's conduct involved repeated course of wrongful acts, developer likely suffered competitive harm, and award complied with Wisconsin's statutory cap on punitive damages, since developer did not suffer physical harm as result of competitor's conduct, competitor did not recklessly disregard safety of others, developer was not financially vulnerable, and ratio of 2:1 between punitive and compensatory awards was excessive, given substantial size of compensatory award. [U.S. Const. Amend. 14](#); [Wis. Stat. Ann. § 895.043\(6\)](#). [Epic Systems Corp. v. Tata Consultancy Services Ltd.](#), 980 F.3d 1117 (7th Cir. 2020).

In borrower's action against loan servicer for its repeated attempts to collect debt after her bankruptcy discharge, jury's award of \$3 million in punitive damages under the Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA) violated due process and would be reduced to \$582,000; though, given loan servicer's repeated actions, recidivism, and reckless indifference to rights of financially vulnerable borrower, its conduct was reprehensible, it was not to an extreme degree as it caused no physical injuries and did not reflect an indifference to health or safety, there was no evidence that loan servicer acted maliciously, ratio between compensatory and punitive damages awards on borrower's four related claims, roughly 5:1, was high given the large total compensatory award of \$582,000 for loan servicer's indifferent mistreatment of a single mortgage of \$135,000, and amount of civil penalties in comparable cases pointed to lower award reflected by 1:1 ratio. [U.S. Const. Amends. 5, 14](#); [815 Ill. Comp. Stat. Ann. 505/1](#). [Saccameno v. U.S. Bank National Association](#), 943 F.3d 1071 (7th Cir. 2019).

The constitutional line for whether the amount of an award of punitive damages violates due process is not marked by a simple mathematical formula comparing compensatory damages and punitive damages. [U.S. Const. Amend. 5](#). [Bryant v. Jeffrey Sand Company](#), 919 F.3d 520 (8th Cir. 2019).

There is no certain ratio of punitive to compensatory damages at which a constitutionally permissible punitive damages award is transformed into an unconstitutionally excessive one violative of the defendant's due process rights. [U.S. Const. Amend. 5. Cote v. Philip Morris USA, Inc., 985 F.3d 840 \(11th Cir. 2021\).](#)

Ratio of 1.5-to-one between punitive and compensatory damages was constitutional maximum under due process clause for corporate employer's conduct related to employee's termination from employment by district manager following complaints, and thus ratio between award of \$1,020,042 in compensatory damages and award of \$4 million in punitive damages weighed in favor of finding that punitive damages award was excessive under due process clause in employee's action against employer for workplace retaliation in violation of the Fair Employment and Housing Act (FEHA), where there was relatively low corporate reprehensibility and a substantial award of noneconomic damages. [U.S. Const. Amend. 14; Cal. Civ. Code § 3294; Cal. Gov't Code § 12940\(h\). Colucci v. T-Mobile USA, Inc., 48 Cal. App. 5th 442, 262 Cal. Rptr. 3d 50 \(4th Dist. 2020\), review filed, \(June 4, 2020\).](#)

Award of \$500,000 in punitive damages to pedestrian who suffered adhesive frozen shoulder after she was struck by taxicab was not excessive or against the manifest weight of the evidence and did not violate taxicab driver's or taxicab company's due process rights, where, as far as company knew, driver had only been licensed to operate motor vehicle for five months because it did not bother to investigate anything beyond his recently issued Illinois license, company's fleet manager admitted that he probably would not have hired driver had he known of driver's driving record beyond five months, company knew that driver had never driven a cab but failed to ensure that he was properly trained, and company did not change its vetting procedures after the accident. [U.S. Const. Amend. 14. Baumrucker v. Express Cab Dispatch, Inc., 2017 IL App \(1st\) 161278, 416 Ill. Dec. 500, 84 N.E.3d 482 \(App. Ct. 1st Dist. 2017\).](#)

Workers' compensation carrier's unreasonable dispute with classification of worker as permanently and totally disabled (PTD) following work-related injury, which dispute caused delay of one and one-half years in worker's receipt of partial commutation, was reprehensible, as factor in determining whether award of punitive damages in amount of \$6.75 million on workers' claim for bad faith comported with due process; carrier did not dispute PTD classification internally, its actions showed lack of consideration for worker by forcing him to fight carrier on worthless and manufactured issue, delayed receipt of partial commutation placed financial pressure on worker, and carrier engaged in repeated acts to delay PTD determination by suggesting possibility of vocational rehabilitation, even though it never intended to offer such services to worker. [U.S. Const. Amend. 14. Thornton v. American Interstate Insurance Company, 940 N.W.2d 1 \(Iowa 2020\).](#)

Comparison of total punitive damages award and total compensatory damages award, rather than evaluation of each client's award individually, was proper when analyzing whether punitive damages award was grossly excessive in violation of due process, in action against accounting firm alleging fraud and gross negligence in the marketing and sale of a tax shelter, which purportedly would have allowed funds held by clients' Cayman Island-based companies to be distributed to shareholders in the U.S. without federal tax liability; although clients had legally distinct interests and damages, firm owed the same duties to them, and fraud and gross negligence was perpetrated simultaneously against all of them as part of an integrated scheme. [U.S. Const. Amend. 14. Yung v. Grant Thornton, LLP, 563 S.W.3d 22 \(Ky. 2018\).](#)

Degree of reprehensibility factor weighed against finding that due process was satisfied by Court of Appeals' suggested remittitur of exemplary damages against each of five former upper management employees, who all joined competitor, to amount four times greater than each employee's joint and several liability for compensatory damages, even though employees acted with malice when they left provider of contract management services for psychiatric and behavioral health programs and took confidential and proprietary information, since provider was only harmed economically, not physically, employees' conduct did not show indifference to health or safety of others, provider was not financially vulnerable target, and employees were not repeat offenders, despite committing multiple torts. [U.S. Const. Amend. 14. Horizon Health Corporation v. Acadia Healthcare Company, Inc., 520 S.W.3d 848 \(Tex. 2017\).](#)

The review of a punitive damages award for excessiveness can have two dimensions; (1) the award may be reviewed to determine whether it complies with minimum federal substantive due process requirements, and (2) the award may be reviewed to determine whether it exceeds state law limits on excessiveness. [U.S.C.A. Const.Amend. 14. Quicken Loans, Inc. v. Brown, 777 S.E.2d 581 \(W. Va. 2014\)](#), cert. denied, [136 S. Ct. 34 \(2015\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 111 S. Ct. 1032, 113 L. Ed. 2d 1 \(1991\)](#).
A.L.R. Library
[Validity of State Statutory Cap on Punitive Damages, 103 A.L.R.5th 379.](#)
[Validity, construction, and application of statutes requiring that percentage of punitive damages awards be paid directly to state or court-administered fund, 16 A.L.R.5th 129.](#)
[Constitutional Issues Concerning Punitive Damages—Supreme Court Cases, 1 A.L.R. Fed. 2d 529.](#)
- 2 U.S.—[State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585, 60 Fed. R. Evid. Serv. 1349, 1 A.L.R. Fed. 2d 739 \(2003\)](#); [BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 \(1996\)](#); [TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443, 113 S. Ct. 2711, 125 L. Ed. 2d 366 \(1993\)](#); [Turley v. ISG Lackawanna, Inc., 774 F.3d 140 \(2d Cir. 2014\)](#); [Arnold v. Wilder, 657 F.3d 353, 86 Fed. R. Evid. Serv. 664 \(6th Cir. 2011\)](#); [Hallmark Cards, Inc. v. Monitor Clipper Partners, LLC, 758 F.3d 1051 \(8th Cir. 2014\)](#).
[Ariz.—Desert Palm Surgical Group, P.L.C. v. Petta, 236 Ariz. 568, 343 P.3d 438 \(Ct. App. Div. 1 2015\).](#)
[Cal.—Izell v. Union Carbide Corporation, 231 Cal. App. 4th 962, 180 Cal. Rptr. 3d 382 \(2d Dist. 2014\).](#)
[Ky.—Indiana Insurance Company v. Demetre, 2015 WL 393041 \(Ky. Ct. App. 2015\).](#)
[Mo.—Blanks v. Fluor Corp., 450 S.W.3d 308 \(Mo. Ct. App. E.D. 2014\).](#)
[Tex.—Barnhart v. Morales, 2015 WL 1020869 \(Tex. App. Houston 14th Dist. 2015\).](#)
- 3 U.S.—[Hallmark Cards, Inc. v. Monitor Clipper Partners, LLC, 758 F.3d 1051 \(8th Cir. 2014\)](#).
- 4 U.S.—[State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585, 60 Fed. R. Evid. Serv. 1349, 1 A.L.R. Fed. 2d 739 \(2003\)](#).
[Cal.—Izell v. Union Carbide Corporation, 231 Cal. App. 4th 962, 180 Cal. Rptr. 3d 382 \(2d Dist. 2014\).](#)
[Ohio—Barnes v. Univ. Hosps. of Cleveland, 119 Ohio St. 3d 173, 2008-Ohio-3344, 893 N.E.2d 142 \(2008\).](#)
- 5 U.S.—[Myers v. Central Florida Investments, Inc., 592 F.3d 1201 \(11th Cir. 2010\)](#).
- 6 U.S.—[Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 111 S. Ct. 1032, 113 L. Ed. 2d 1 \(1991\)](#).
- 7 [Mo.—Blanks v. Fluor Corp., 450 S.W.3d 308 \(Mo. Ct. App. E.D. 2014\)](#).
- 8 U.S.—[Ondrisek v. Hoffman, 698 F.3d 1020 \(8th Cir. 2012\)](#), cert. denied, [133 S. Ct. 1820, 185 L. Ed. 2d 814 \(2013\)](#).
Improper ratio of 13-to-1
[Ariz.—Arellano v. Primerica Life Ins. Co., Co., 235 Ariz. 371, 332 P.3d 597 \(Ct. App. Div. 1 2014\).](#)
Excessive by multiples of statutory cap
[U.S.—Williams v. ConAgra Poultry Co., 378 F.3d 790, 64 Fed. R. Evid. Serv. 1256 \(8th Cir. 2004\).](#)
- 9 U.S.—[State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585, 60 Fed. R. Evid. Serv. 1349, 1 A.L.R. Fed. 2d 739 \(2003\)](#).
[W. Va.—Perrine v. E.I. du Pont de Nemours and Co., 225 W. Va. 482, 694 S.E.2d 815 \(2010\).](#)
Reasonable one-one ratio
[U.S.—Morgan v. New York Life Ins. Co., 559 F.3d 425 \(6th Cir. 2009\).](#)
[Mo.—Lewellen v. Franklin, 441 S.W.3d 136 \(Mo. 2014\).](#)
Reasonable two-to-one ratio
[U.S.—Turley v. ISG Lackawanna, Inc., 774 F.3d 140 \(2d Cir. 2014\).](#)
Reasonable three-to-one ratio
[U.S.—Lee ex rel. Lee v. Borders, 764 F.3d 966 \(8th Cir. 2014\).](#)

- 10 U.S.—Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001); Turley v. ISG Lackawanna, Inc., 774 F.3d 140 (2d Cir. 2014); Lee ex rel. Lee v. Borders, 764 F.3d 966 (8th Cir. 2014); Arizona v. ASARCO LLC, 773 F.3d 1050 (9th Cir. 2014).
 Ariz.—Desert Palm Surgical Group, P.L.C. v. Petta, 236 Ariz. 568, 343 P.3d 438 (Ct. App. Div. 1 2015).
 Cal.—Izell v. Union Carbide Corporation, 231 Cal. App. 4th 962, 180 Cal. Rptr. 3d 382 (2d Dist. 2014).
 Ky.—Indiana Insurance Company v. Demetre, 2015 WL 393041 (Ky. Ct. App. 2015).
 Mo.—Lewellen v. Franklin, 441 S.W.3d 136 (Mo. 2014).
 Tex.—Barnhart v. Morales, 2015 WL 1020869 (Tex. App. Houston 14th Dist. 2015).
- 11 U.S.—State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585, 60 Fed. R. Evid. Serv. 1349, 1 A.L.R. Fed. 2d 739 (2003).
- 12 U.S.—Lee ex rel. Lee v. Borders, 764 F.3d 966 (8th Cir. 2014).
 Ariz.—Arellano v. Primerica Life Ins. Co., Co., 235 Ariz. 371, 332 P.3d 597 (Ct. App. Div. 1 2014).
 Cal.—Izell v. Union Carbide Corporation, 231 Cal. App. 4th 962, 180 Cal. Rptr. 3d 382 (2d Dist. 2014).
 Tex.—Barnhart v. Morales, 2015 WL 1020869 (Tex. App. Houston 14th Dist. 2015).
- 13 Cal.—Izell v. Union Carbide Corporation, 231 Cal. App. 4th 962, 180 Cal. Rptr. 3d 382 (2d Dist. 2014).
- 14 U.S.—Honda Motor Co., Ltd. v. Oberg, 512 U.S. 415, 114 S. Ct. 2331, 129 L. Ed. 2d 336 (1994).

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

4. Discharge of or Restrictions Upon Liability; Immunity from Suit

§ 2386. Discharge or restrictions of liability generally

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4410 to 4412, 4418 to 4425

Due process limits the validity of statutes or actions effecting discharges or restrictions of liability when rights or interests are vested but generally permits the discharge or restriction of future liability.

Ordinarily, under the constraints of due process, the State may not destroy or substantially impair liability under an existing right of action,¹ contractual obligation,² substantive statutory right or entitlement,³ or judgment⁴ but may condition the retention of rights against others on compliance with law⁵ or prescribed procedures⁶ and may reasonably define relative rights among parties or claimants.⁷ The legislature generally may limit⁸ or abrogate a right of action for a future tort,⁹ future contract,¹⁰ or future statutory entitlement or claim.¹¹

Acts done under military authority.

Independent of constitutional or statutory provisions, it is a principle of law that there is no personal liability for acts done in accordance with the usages of civilized warfare, and therefore legislation providing for discharge for any supposed liability of such a nature is valid.¹²

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Footnotes

- 1 U.S.—*Resolution Trust Corp. v. Fleischer*, 862 F. Supp. 309 (D. Kan. 1994) certified question answered, 257 Kan. 360, 892 P.2d 497 (1995).
 Fla.—*Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Ass'n, Inc.*, 127 So. 3d 1258 (Fla. 2013).
 Ky.—*Jarvis v. National City*, 410 S.W.3d 148 (Ky. 2013).
 La.—*Burmaster v. Plaquemines Parish Government*, 982 So. 2d 795 (La. 2008).
- 2 La.—*M.J. Farms, Ltd. v. Exxon Mobil Corp.*, 998 So. 2d 16 (La. 2008), amended on reh'g (Sept. 19, 2008).
- 3 Mass.—*Bird Anderson v. BNY Mellon, N.A.*, 463 Mass. 299, 974 N.E.2d 21 (2012).
 N.J.—*Chiarello v. Board of Trustees, Public Employees Retirement System*, 429 N.J. Super. 194, 57 A.3d 567 (App. Div. 2012).
- 4 U.S.—*Forbes Pioneer Boat Line v. Board of Com'rs of Everglades Drainage Dist.*, 258 U.S. 338, 42 S. Ct. 325, 66 L. Ed. 647 (1922).
Judgment liens protected
 Kan.—*State ex rel. Six v. Mike W. Graham & Associates, LLC*, 42 Kan. App. 2d 1030, 220 P.3d 1105 (2009).
- 5 U.S.—*Avera v. United Air Lines*, 686 F. Supp. 2d 1262 (N.D. Fla. 2010), *aff'd*, 465 Fed. Appx. 855 (11th Cir. 2012).
- 6 U.S.—*Vance v. Vance*, 108 U.S. 514, 2 S. Ct. 854, 27 L. Ed. 808 (1883).
 Haw.—*Troyer v. Adams*, 102 Haw. 399, 77 P.3d 83 (2003).
- 7 U.S.—*Blake v. McClung*, 172 U.S. 239, 19 S. Ct. 165, 43 L. Ed. 432 (1898).
- 8 U.S.—*Branch v. U.S.*, 69 F.3d 1571 (Fed. Cir. 1995).
 Alaska—*Evans ex rel. Kutch v. State*, 56 P.3d 1046 (Alaska 2002).
 Mich.—*In re McEvoy*, 267 Mich. App. 55, 704 N.W.2d 78, 202 Ed. Law Rep. 778 (2005).
 Tenn.—*Mills v. Wong*, 155 S.W.3d 916 (Tenn. 2005).
 Utah—*Tindley v. Salt Lake City School Dist.*, 2005 UT 30, 116 P.3d 295, 200 Ed. Law Rep. 406 (Utah 2005) (holding modified on other grounds by, *Moss v. Pete Suazo Utah Athletic Com'n*, 2007 UT 99, 175 P.3d 1042 (Utah 2007)).
- 9 U.S.—*Alexander v. Whitman*, 114 F.3d 1392 (3d Cir. 1997); *Resolution Trust Corp. v. Fleischer*, 862 F. Supp. 309 (D. Kan. 1994) certified question answered, 257 Kan. 360, 892 P.2d 497 (1995); *Zammit v. Shire US, Inc.*, 415 F. Supp. 2d 760 (E.D. Mich. 2006).
 Ga.—*Couch v. Parker*, 280 Ga. 580, 630 S.E.2d 364 (2006).
 Tenn.—*Mills v. Wong*, 155 S.W.3d 916 (Tenn. 2005).
Unmatured tort claims barred
 Pa.—*Erdely v. Hinchcliffe and Keener, Inc.*, 2005 PA Super 151, 875 A.2d 1078 (2005).
- 10 U.S.—*McDaniel v. Baptist Memorial Hospital*, 469 F.2d 230, 11 U.C.C. Rep. Serv. 740 (6th Cir. 1972).
- 11 U.S.—*Blount v. Smith*, 440 F. Supp. 528 (M.D. Pa. 1977).
 Haw.—*Troyer v. Adams*, 102 Haw. 399, 77 P.3d 83 (2003).
 Minn.—*Rochester City Lines, Co. v. City of Rochester*, 846 N.W.2d 444 (Minn. Ct. App. 2014), review granted (June 17, 2014).
- 12 U.S.—*Freeland v. Williams*, 131 U.S. 405, 9 S. Ct. 763, 33 L. Ed. 193 (1889).

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

P. Creation, Regulation, Discharge, Alteration, and Other Aspects of Imposition of Liability Under Law

4. Discharge of or Restrictions Upon Liability; Immunity from Suit

§ 2387. Immunity from suit; limitation of liability

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4413, 4420

Due process is not denied by the doctrine of sovereign or governmental immunity consistent with the rational basis standard, but the limitation of liability in the waiver of immunity must meet due process standards.

Under the due process standard requiring a rational basis, as reasonably related to legitimate state interests, the doctrine of sovereign or governmental immunity does not, in itself, violate due process,¹ and the due process guaranty does not override the states' sovereign immunity from suit in federal court under the Eleventh Amendment to the United States Constitution.² To the extent that immunity is waived, legislative enactments must conform to due process, but governmental tort claims or tort immunity acts may limit liability or retain immunity for particular entities or functions, as rationally based limitations,³ or apply damage limitations within the scope of the immunity waiver,⁴ as in the limitation of liability for nuclear accidents resulting from the operation of federally licensed private nuclear power plants,⁵ or conferring immunity on officials responsible for parole decisions but not authorizing or immunizing deliberate killing of any human being.⁶

Forms of immunity, other than governmental or sovereign immunity, are within the scope of due process, including charitable immunity from tort liability,⁷ inter-spousal immunity,⁸ the immunity of infants under the age of criminal responsibility,⁹ parental immunity from suit by an unemancipated child as a member of the parent's household,¹⁰ the immunity of social hosts to nonlicensees,¹¹ and recreational use exemptions from liability for property owners.¹²

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Footnotes

- 1 U.S.—*Freilich v. Upper Chesapeake Health, Inc.*, 313 F.3d 205 (4th Cir. 2002); *Christensen v. Ward*, 916 F.2d 1462 (10th Cir. 1990); *Zammit v. Shire US, Inc.*, 415 F. Supp. 2d 760 (E.D. Mich. 2006).
Ala.—*Alabama State Docks Terminal Ry. v. Lyles*, 797 So. 2d 432 (Ala. 2001).
Cal.—*Country Eggs, Inc. v. Kawamura*, 129 Cal. App. 4th 589, 28 Cal. Rptr. 3d 348 (3d Dist. 2005).
Miss.—*Wallace v. Town Of Raleigh*, 815 So. 2d 1203 (Miss. 2002).
Va.—*Com. v. Luzik*, 259 Va. 198, 524 S.E.2d 871 (2000).
W. Va.—*Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997).
State constitution not violated
Utah—*Parks v. Utah Transit Authority*, 2002 UT 55, 53 P.3d 473 (Utah 2002).
- 2 U.S.—*College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 119 S. Ct. 2219, 144 L. Ed. 2d 605, 135 Ed. Law Rep. 362 (1999); *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627, 119 S. Ct. 2199, 144 L. Ed. 2d 575, 135 Ed. Law Rep. 342 (1999).
- 3 U.S.—*Ellis ex rel. Pendergrass v. Cleveland Mun. School Dist.*, 455 F.3d 690, 211 Ed. Law Rep. 79, 70 Fed. R. Evid. Serv. 851, 66 Fed. R. Serv. 3d 860, 2006 FED App. 0259P (6th Cir. 2006) (Ohio Political Subdivision Tort Liability Act); *Garcia v. Wyeth-Ayerst Laboratories*, 385 F.3d 961, 2004 FED App. 0346P (6th Cir. 2004) (applying Michigan law); *Wilson v. Big Sandy Healthcare, Inc.*, 553 F. Supp. 2d 825 (E.D. Ky. 2008), judgment aff'd, 576 F.3d 329 (6th Cir. 2009) (Federal Tort Claims Act).
Ill.—*American Nat. Bank & Trust Co. of Chicago v. Cook County*, 327 Ill. App. 3d 212, 261 Ill. Dec. 85, 762 N.E.2d 654 (1st Dist. 2001).
Ohio—*Spencer v. Lakeview School Dist.*, 2004-Ohio-5303, 2004 WL 2803302 (Ohio Ct. App. 11th Dist. Trumbull County 2004).
Tex.—*Texas Parks and Wildlife Dept. v. Garland*, 313 S.W.3d 920 (Tex. App. Tyler 2010).
Effect of contrary custom or practice
N.C.—*Dobrowolska ex rel. Dobrowolska v. Wall*, 138 N.C. App. 1, 530 S.E.2d 590 (2000).
- 4 Fla.—*Cauley v. City of Jacksonville*, 403 So. 2d 379 (Fla. 1981).
N.C.—*Hummel v. University of North Carolina*, 156 N.C. App. 108, 576 S.E.2d 124, 173 Ed. Law Rep. 1009 (2003).
Utah—*Tindley v. Salt Lake City School Dist.*, 2005 UT 30, 116 P.3d 295, 200 Ed. Law Rep. 406 (Utah 2005) (holding modified on other grounds by, *Moss v. Pete Suazo Utah Athletic Com'n*, 2007 UT 99, 175 P.3d 1042 (Utah 2007)).
- 5 U.S.—*Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 98 S. Ct. 2620, 57 L. Ed. 2d 595 (1978).
- 6 U.S.—*Martinez v. State of Cal.*, 444 U.S. 277, 100 S. Ct. 553, 62 L. Ed. 2d 481 (1980).
- 7 U.S.—*Sanner v. Trustees of Sheppard and Enoch Pratt Hospital*, 278 F. Supp. 138 (D. Md. 1968), judgment aff'd, 398 F.2d 226 (4th Cir. 1968).
- 8 Ga.—*Gates v. Gates*, 277 Ga. 175, 587 S.E.2d 32 (2003).
Ill.—*Soedler v. Soedler*, 89 Ill. App. 3d 74, 44 Ill. Dec. 425, 411 N.E.2d 547 (3d Dist. 1980).
- 9 Ga.—*Hatch v. O'Neill*, 231 Ga. 446, 202 S.E.2d 44 (1973).
- 10 N.C.—*Evans v. Evans*, 12 N.C. App. 17, 182 S.E.2d 227 (1971).
- 11 Alaska—*Chokwak v. Worley*, 912 P.2d 1248 (Alaska 1996).
- 12 La.—*Stuart v. City of Morgan City*, 504 So. 2d 934 (La. Ct. App. 1st Cir. 1987).
Neb.—*Dykes v. Scotts Bluff County Agr. Soc., Inc.*, 260 Neb. 375, 617 N.W.2d 817 (2000).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

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Research References

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A.L.R. Index, Due Process

West's A.L.R. Digest, [Constitutional Law](#)  [4036](#), [4088](#), [4089](#), [4090](#), [4100](#), [4101](#), [4105\(1\)](#) to [4105\(5\)](#), [4108](#) to [4111](#), [4118](#), [4255](#), [4256](#), [4310](#) to [4314](#), [4372](#), [4445](#), [4493](#) to [4495](#)

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16D C.J.S. Constitutional Law § 2388

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

1. In General

§ 2388. Governmental grants or loans

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4108, 4118

Governmental grants or loans are to be made in accordance with applicable due process requirements in relation to protected interests.

Governmental grants or loans are to be made in accordance with applicable due process requirements, in relation to protected interests,¹ precluding unlawful discrimination,² the absence of articulated standards,³ or official action that rises to the level of conscience-shocking behavior, as required for a violation of substantive due process.⁴ To the extent that a claim in this context goes to the likely outcome of an application for benefits, instead of the denial of procedural safeguards and protections, the claim is one for substantive due process alone.⁵

Procedural due process in this context entails a requirement for notice, particularly as to eligibility requirements and determinations, and an opportunity to be heard in response.⁶ Due process requirements are flexible, affording protections as the situation demands.⁷ Determining what particular procedural due process is due requires taking into consideration: (1) the private interest affected, (2) the risk of erroneous deprivation, and probable value, if any, of additional or substitute procedural safeguards, and (3) the government's interest, which may include fiscal and administrative burdens that additional procedures

would impose.⁸ Even when procedural safeguards are required based on a protectable interest, the use of informal procedures is not inherently a violation if the risk of error in the administrative action is minimal and the government's contrary interests are considerable.⁹

To have a due process protectable property interest in a government benefit, such as a grant or loan, a person must have more than a unilateral expectation of the claimed interest; a person must, instead, have a legitimate claim of entitlement to it, which may arise from a contract, a statute, or a regulation, provided the source of the claim is specific enough to require the provision of the benefit on a nondiscretionary basis.¹⁰ Due process protections or safeguards are required only when the criteria for a protectable interest are met,¹¹ and in the absence of such interests, do not apply.¹² To extent that funds are available, statutes that would create property interests protected by due process apart from funding limits do so regardless of those limits.¹³

Protected interests have been found lacking in claims resting on a research grant application,¹⁴ a development loan application,¹⁵ a small business loan application,¹⁶ an application for urban mass transit funds,¹⁷ a disaster relief and emergency assistance act,¹⁸ Head Start grant renewals,¹⁹ and Community Development Block Grants.²⁰

Procedural due process protections have applied to claims when a protected interest is established under a Home Energy Assistance Program,²¹ the crop subsidy provisions of the Food Security Act,²² the Farmers Home Administration loan program,²³ the Comprehensive Employment and Training Act,²⁴ an emergency shelter grant program,²⁵ the Medical Care Availability and Reduction of Error Fund,²⁶ the school breakfast program,²⁷ and the food stamp program.²⁸

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Footnotes

- 1 U.S.—*National Endowment for the Arts v. Finley*, 524 U.S. 569, 118 S. Ct. 2168, 141 L. Ed. 2d 500 (1998); *Lyng v. Payne*, 476 U.S. 926, 106 S. Ct. 2333, 90 L. Ed. 2d 921 (1986).
- 2 U.S.—*Bob Jones University v. Johnson*, 396 F. Supp. 597 (D.S.C. 1974), *aff'd*, 529 F.2d 514 (4th Cir. 1975).
- 3 U.S.—*Franklin v. Shields*, 569 F.2d 784 (4th Cir. 1977).
Standards not vague
 The statute requiring the National Endowment for the Arts to ensure the use of artistic excellence and artistic merit as criteria by which grant applications are judged, taking into consideration general standards of "decency and respect" for diverse beliefs and values of the American public, is not unconstitutionally vague, given that the statute involves selective subsidies rather than any criminal or regulatory prohibitions and merely adds some imprecise considerations to an already subjective selection process.
 U.S.—*National Endowment for the Arts v. Finley*, 524 U.S. 569, 118 S. Ct. 2168, 141 L. Ed. 2d 500 (1998).
- 4 U.S.—*Pagan v. Calderon*, 448 F.3d 16 (1st Cir. 2006); *Robinson v. Veneman*, 124 Fed. Appx. 893 (5th Cir. 2005).
No arbitrary or capricious action shown
 The appointment of a receiver for the assets of a financially distressed city did not violate substantive due process.
 R.I.—*Moreau v. Flanders*, 15 A.3d 565 (R.I. 2011).
- 5 U.S.—*Parkridge Investors Ltd. Partnership by Mortimer v. Farmers Home Admin.*, 13 F.3d 1192 (8th Cir. 1994).
- 6 U.S.—*Kapps v. Wing*, 404 F.3d 105 (2d Cir. 2005).
Notice and hearing are fundamental
 U.S.—*Capitol Mortg. Bankers, Inc. v. Cuomo*, 222 F.3d 151 (4th Cir. 2000).
Sufficient notice afforded
 U.S.—*Downer v. U.S. By and Through U.S. Dept. of Agriculture and Soil Conservation Service*, 97 F.3d 999 (8th Cir. 1996).

Meaningful hearing afforded

U.S.—*Omaha Tribe of Nebraska v. U.S. Dept. of Labor*, 998 F.2d 581 (8th Cir. 1993).

Termination procedure regulations required

U.S.—*Coghlan v. Glickman*, 241 F. Supp. 2d 643 (S.D. Miss. 2001), *aff'd*, 34 Fed. Appx. 963 (5th Cir. 2002).

U.S.—*Capitol Mortg. Bankers, Inc. v. Cuomo*, 222 F.3d 151 (4th Cir. 2000).

U.S.—*Kapps v. Wing*, 404 F.3d 105 (2d Cir. 2005).

U.S.—*Capitol Mortg. Bankers, Inc. v. Cuomo*, 222 F.3d 151 (4th Cir. 2000).

U.S.—*Citizens Health Corp. v. Sebelius*, 725 F.3d 687 (7th Cir. 2013).

Pa.—*Pennsylvania Federation of Dog Clubs v. Com.*, 105 A.3d 51 (Pa. Commw. Ct. 2014).

Limited discretion requires mandatory language

U.S.—*Bishop v. City of Galveston*, 595 Fed. Appx. 372 (5th Cir. 2014), petition for certiorari filed, 83 U.S.L.W. 3767 (U.S. Mar. 18, 2015).

Qualified under noncompetitive program

U.S.—*Mary's House, Inc. v. North Carolina*, 976 F. Supp. 2d 691 (M.D. N.C. 2013).

Qualified after loan is made

U.S.—*Coghlan v. Glickman*, 241 F. Supp. 2d 643 (S.D. Miss. 2001), *aff'd*, 34 Fed. Appx. 963 (5th Cir. 2002).

No agreed terms or commitment to loan

U.S.—*Snow Pallet, Inc. v. Clinton County Indus. Development Authority*, 46 Fed. Appx. 787 (6th Cir. 2002).

U.S.—*Citizens Health Corp. v. Sebelius*, 725 F.3d 687 (7th Cir. 2013).

U.S.—*Stampley v. City of St. Paul*, 230 F.3d 1364 (8th Cir. 2000); *Razorback Cab of Ft. Smith, Inc. v. Flowers*, 122 F.3d 657 (8th Cir. 1997).

Ariz.—*Arizona Farm Bureau Federation v. Brewer*, 226 Ariz. 16, 243 P.3d 619 (Ct. App. Div. 1 2010).

Pa.—*Pennsylvania Federation of Dog Clubs v. Com.*, 105 A.3d 51 (Pa. Commw. Ct. 2014).

U.S.—*Kapps v. Wing*, 404 F.3d 105 (2d Cir. 2005).

U.S.—*Kalderon v. Finkelstein*, 495 Fed. Appx. 103 (2d Cir. 2012).

U.S.—*Ferrone v. Onorato*, 298 Fed. Appx. 138 (3d Cir. 2008).

U.S.—*Stampley v. City of St. Paul*, 230 F.3d 1364 (8th Cir. 2000).

U.S.—*Razorback Cab of Ft. Smith, Inc. v. Flowers*, 122 F.3d 657 (8th Cir. 1997).

U.S.—*Bishop v. City of Galveston*, 595 Fed. Appx. 372 (5th Cir. 2014), petition for certiorari filed, 83 U.S.L.W. 3767 (U.S. Mar. 18, 2015).

U.S.—*Ohio Head Start Ass'n, Inc. v. U.S. Dept. of Health and Human Services*, 873 F. Supp. 2d 335 (D.D.C. 2012), injunction pending appeal denied, 902 F. Supp. 2d 61 (D.D.C. 2012) and *aff'd*, 510 Fed. Appx. 1 (D.C. Cir. 2013).

U.S.—*Fair Haven Development Corp. v. Destefano*, 528 F. Supp. 2d 25 (D. Conn. 2007).

Mere application insufficient interest

U.S.—*Native Village of Akutan v. Jackson*, 442 F. Supp. 2d 789 (D. Alaska 2006).

U.S.—*Kapps v. Wing*, 404 F.3d 105 (2d Cir. 2005).

U.S.—*Downer v. U.S. By and Through U.S. Dept. of Agriculture and Soil Conservation Service*, 97 F.3d 999 (8th Cir. 1996).

U.S.—*Coghlan v. Glickman*, 241 F. Supp. 2d 643 (S.D. Miss. 2001), *aff'd*, 34 Fed. Appx. 963 (5th Cir. 2002).

U.S.—*Omaha Tribe of Nebraska v. U.S. Dept. of Labor*, 998 F.2d 581 (8th Cir. 1993).

U.S.—*Mary's House, Inc. v. North Carolina*, 976 F. Supp. 2d 691 (M.D. N.C. 2013).

Pa.—*Hospital & Healthsystem Ass'n of Pa. v. Com.*, 621 Pa. 260, 77 A.3d 587 (2013).

U.S.—*Torres v. Butz*, 397 F. Supp. 1015 (N.D. Ill. 1975).

U.S.—*U. S. Dept. of Agriculture v. Murry*, 413 U.S. 508, 93 S. Ct. 2832, 37 L. Ed. 2d 767 (1973); *Aleman v. Glickman*, 217 F.3d 1191 (9th Cir. 2000).

Hearing opportunity provided

U.S.—*Otis v. Madigan*, 115 Fed. Appx. 315 (7th Cir. 2004); *J.C.C. Food & Liquors v. U.S.*, 133 F.3d 555 (7th Cir. 1998).

Benefit termination notice and hearing

Alaska—*Allen v. State, Dept. of Health & Social Services, Div. of Public Assistance*, 203 P.3d 1155 (Alaska 2009).

Benefit overpayment notice and hearing

Ariz.—*Henricks v. Arizona Dept. of Economic Sec.*, 229 Ariz. 47, 270 P.3d 874 (Ct. App. Div. 1 2012).

Lawful resident aliens excluded

U.S.—[Shvartsman v. Apfel](#), 138 F.3d 1196, 40 Fed. R. Serv. 3d 6 (7th Cir. 1998).

Strict liability penalty not substantive denial

U.S.—[Traficanti v. U.S.](#), 227 F.3d 170 (4th Cir. 2000).

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16D C.J.S. Constitutional Law § 2389

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

1. In General

§ 2389. Private membership organizations; conduct as to members

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4445

A private membership organization whose activities are considered to constitute "state action" must extend due process safeguards to any member when the organization acts in a governmental capacity in depriving a member of a protected right or interest.

Private membership organizations are not required to provide due process rights to members concerning purely private and internal affairs.¹ There are no due process rights when the activities of the private organization do not constitute state action.²

A private membership organization whose activities are considered to constitute state action must extend due process safeguards to any member when the organization acts in a governmental or quasi-governmental capacity in depriving a member of a fundamental right or interest.³ For this purpose, there is state action when an individual or group is actually an official arm of state, acting under law and regulations of state, or under orders from higher state officials, with all the actual authority of the state behind it, and when individual action is forced or commanded by the state; there may even be state action when private discrimination is encouraged by state policy.⁴

When the state action predicate is met, the actions of a qualified association in conducting its business affairs in a manner affecting the property rights of members are subject to challenge on substantive due process grounds for acts that are arbitrary, irrational, or shocking to the conscience.⁵

In addition to the state action requirement, as with other due process challenges, it must appear that a member challenging the actions of a private membership organization possesses a vested protected property interest, without which no protections are afforded.⁶ A person who has a mere expectation of a certain benefit, as opposed to an entitlement, may not invoke the due process guarantee when the expectation is denied.⁷

An organization's interpretation of its rules or regulations, made by a lawfully designated committee of the organization, is entitled to great weight in determining whether due process was denied in the application of the rule or regulation.⁸ Generally, proceedings based on proper by-laws of voluntary associations constitute due process of law as to members of the associations.⁹

When the state action predicate is met, due process protections apply and govern an organization's actions in denying membership to a prospective member,¹⁰ and with respect to disciplining members,¹¹ and when an association provides disciplinary procedures for members and for review of such actions or decisions, the procedures must be followed.¹² Due process standards govern proceedings in which members of private organizations may be fined,¹³ suspended,¹⁴ or expelled.¹⁵ When due process protections apply, the member must be given notice of the charges¹⁶ and an opportunity to be heard¹⁷ before an impartial tribunal.¹⁸ Nevertheless, a hearing need not be of a trial-type or adversary in nature in order to accord due process;¹⁹ in fact, a personal hearing is not a due process requirement in all circumstances and situations.²⁰ A private membership organization is not required by due process to follow the procedure that would be required in a judicial proceeding.²¹

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Footnotes

- 1 U.S.—*Hallinan v. Fraternal Order of Police of Chicago Lodge No. 7*, 570 F.3d 811 (7th Cir. 2009).
Kan.—*Pollock v. Crestview Country Club Ass'n*, 41 Kan. App. 2d 904, 205 P.3d 1283 (2009).
Fairness required, not due process
Cal.—*Dougherty v. Haag*, 165 Cal. App. 4th 315, 81 Cal. Rptr. 3d 1 (4th Dist. 2008).
D.C.—*Blodgett v. University Club*, 930 A.2d 210 (D.C. 2007).
Basketball association as private actor
The amateur basketball association is a private rather than governmental actor and is not subject to the due process standards in refusing to reinstate a professional basketball player's amateur status, even though it undertook to be the exclusive licensing authority for its sport and Congress, under the Amateur Sports Act, bestowed on the association exclusive powers as a national governing body under the United States Olympic Committee.
U.S.—*Behagen v. Amateur Basketball Ass'n of U.S.*, 884 F.2d 524 (10th Cir. 1989).
- 2 U.S.—*Behagen v. Amateur Basketball Ass'n of U.S.*, 884 F.2d 524 (10th Cir. 1989); *Chance v. Reed*, 538 F. Supp. 2d 500 (D. Conn. 2008).
Kan.—*Pollock v. Crestview Country Club Ass'n*, 41 Kan. App. 2d 904, 205 P.3d 1283 (2009).
Not required under state constitution
U.S.—*Campbell v. American Psychological Ass'n*, 68 F. Supp. 2d 768 (W.D. Tex. 1999).
- 3 U.S.—*Allan v. Securities and Exchange Commission*, 577 F.2d 388 (7th Cir. 1978); *Erenstein v. S.E.C.*, 316 Fed. Appx. 865 (11th Cir. 2008).
Property owners association as state entity
U.S.—*Bates v. Colony Park Ass'n*, 393 F. Supp. 2d 578 (E.D. Mich. 2005).
- 4 U.S.—*St. Augustine High School v. Louisiana High School Athletic Ass'n*, 270 F. Supp. 767 (E.D. La. 1967), judgment aff'd, 396 F.2d 224, 12 Fed. R. Serv. 2d 592 (5th Cir. 1968).

- 5 U.S.—*Bates v. Colony Park Ass'n*, 393 F. Supp. 2d 578 (E.D. Mich. 2005).
- 6 U.S.—*Cornerstone Christian Schools v. University Interscholastic League*, 563 F.3d 127, 243 Ed. Law Rep. 609 (5th Cir. 2009); *Tancredi v. Metropolitan Life Ins. Co.*, 149 F. Supp. 2d 80 (S.D. N.Y. 2001), judgment aff'd, 316 F.3d 308 (2d Cir. 2003).
Wash.—*LK Operating, LLC v. Collection Group, LLC*, 181 Wash. 2d 48, 331 P.3d 1147 (2014).
Must show substantial right implicated
Ill.—*Lee v. Snyder*, 285 Ill. App. 3d 555, 220 Ill. Dec. 715, 673 N.E.2d 1136 (1st Dist. 1996).
- 7 U.S.—*Hardy v. University Interscholastic League*, 759 F.2d 1233, 24 Ed. Law Rep. 720 (5th Cir. 1985).
Miss.—*Mississippi High School Activities Ass'n, Inc. v. Coleman By and on Behalf of Laymon*, 631 So. 2d 768, 89 Ed. Law Rep. 692 (Miss. 1994).
Tex.—*Eanes Independent School Dist. v. Logue*, 712 S.W.2d 741, 33 Ed. Law Rep. 929 (Tex. 1986).
- 8 U.S.—*Colorado Seminary (University of Denver) v. National Collegiate Athletic Ass'n*, 417 F. Supp. 885 (D. Colo. 1976), judgment aff'd, 570 F.2d 320 (10th Cir. 1978).
- 9 Kan.—*Pollock v. Crestview Country Club Ass'n*, 41 Kan. App. 2d 904, 205 P.3d 1283 (2009).
Miss.—*McClatchy v. Brotherhood's Relief & Compensation Fund*, 79 So. 3d 545 (Miss. Ct. App. 2011).
Ohio—*Wedemeyer v. U.S.S. F.D.R (CV-42) Reunion Assoc.*, 2010-Ohio-1502, 2010 WL 1267215 (Ohio Ct. App. 3d Dist. Allen County 2010).
- 10 U.S.—*St. Augustine High School v. Louisiana High School Athletic Ass'n*, 270 F. Supp. 767 (E.D. La. 1967), judgment aff'd, 396 F.2d 224, 12 Fed. R. Serv. 2d 592 (5th Cir. 1968).
- 11 U.S.—*Austin v. American Ass'n of Neurological Surgeons*, 120 F. Supp. 2d 1151 (N.D. Ill. 2000), aff'd, 253 F.3d 967, 57 Fed. R. Evid. Serv. 385 (7th Cir. 2001).
N.C.—*Reidy v. Whitehart Ass'n, Inc.*, 185 N.C. App. 76, 648 S.E.2d 265 (2007).
Ohio—*Hamper v. Suburban Umpires Assoc., Inc.*, 2009-Ohio-5376, 2009 WL 3234173 (Ohio Ct. App. 8th Dist. Cuyahoga County 2009).
- 12 W. Va.—*State ex rel. West Virginia Secondary School Activities Commission v. Oakley*, 152 W. Va. 533, 164 S.E.2d 775 (1968).
Reprimand not deprivation
Even though the club member was given no notice for the reprimand letter received from the country club, the member's due process rights under the state constitution were not violated in view of the fact that the club's bylaws only required notice for suspension or termination and the letter of reprimand did not suspend or terminate membership rights.
Mont.—*Johnson v. Green Meadow Country Club, Inc.*, 222 Mont. 405, 721 P.2d 1287 (1986).
- 13 N.C.—*Reidy v. Whitehart Ass'n, Inc.*, 185 N.C. App. 76, 648 S.E.2d 265 (2007).
Ohio—*Kitchen v. Lake Lorelei Property Owners' Ass'n, Inc.*, 2002-Ohio-2797, 2002 WL 1274256 (Ohio Ct. App. 12th Dist. Brown County 2002).
- 14 N.Y.—*Blake v. North Shore Multiple Listing Service, Inc.*, 81 Misc. 2d 793, 367 N.Y.S.2d 440 (Sup 1975).
- 15 U.S.—*Warren v. National Ass'n of Secondary School Principals*, 375 F. Supp. 1043 (N.D. Tex. 1974).
Ohio—*Hamper v. Suburban Umpires Assoc., Inc.*, 2009-Ohio-5376, 2009 WL 3234173 (Ohio Ct. App. 8th Dist. Cuyahoga County 2009).
- 16 U.S.—*Austin v. American Ass'n of Neurological Surgeons*, 120 F. Supp. 2d 1151 (N.D. Ill. 2000), aff'd, 253 F.3d 967, 57 Fed. R. Evid. Serv. 385 (7th Cir. 2001).
Ind.—*Lynn v. Windridge Co-Owners Ass'n, Inc.*, 743 N.E.2d 305 (Ind. Ct. App. 2001).
N.C.—*Reidy v. Whitehart Ass'n, Inc.*, 185 N.C. App. 76, 648 S.E.2d 265 (2007).
Ohio—*Hamper v. Suburban Umpires Assoc., Inc.*, 2009-Ohio-5376, 2009 WL 3234173 (Ohio Ct. App. 8th Dist. Cuyahoga County 2009).
Adequacy of notice
U.S.—*Duby v. American College of Surgeons*, 468 F.2d 364 (7th Cir. 1972); *Warren v. National Ass'n of Secondary School Principals*, 375 F. Supp. 1043 (N.D. Tex. 1974).
- 17 U.S.—*Hatley v. American Quarter Horse Ass'n*, 552 F.2d 646 (5th Cir. 1977); *Austin v. American Ass'n of Neurological Surgeons*, 120 F. Supp. 2d 1151 (N.D. Ill. 2000), aff'd, 253 F.3d 967, 57 Fed. R. Evid. Serv. 385 (7th Cir. 2001).
N.C.—*Reidy v. Whitehart Ass'n, Inc.*, 185 N.C. App. 76, 648 S.E.2d 265 (2007).

Ohio—[Hamper v. Suburban Umpires Assoc., Inc.](#), 2009-Ohio-5376, 2009 WL 3234173 (Ohio Ct. App. 8th Dist. Cuyahoga County 2009).

Presence of counsel not inherent requirement

U.S.—[Crimmins v. American Stock Exchange, Inc.](#), 346 F. Supp. 1256 (S.D. N.Y. 1972).

18 U.S.—[Sloan v. New York Stock Exchange, Inc.](#), 489 F.2d 1 (2d Cir. 1973); [Austin v. American Ass'n of Neurological Surgeons](#), 120 F. Supp. 2d 1151 (N.D. Ill. 2000), [aff'd](#), 253 F.3d 967, 57 Fed. R. Evid. Serv. 385 (7th Cir. 2001).

Combination of functions did not deny due process

U.S.—[NAACP of Houston Metropolitan Council v. NAACP](#), 460 F. Supp. 583 (S.D. Tex. 1978).

19 U.S.—[Duby v. American College of Surgeons](#), 468 F.2d 364 (7th Cir. 1972).

20 U.S.—[Gunter Harz Sports, Inc. v. U. S. Tennis Ass'n, Inc.](#), 511 F. Supp. 1103 (D. Neb. 1981), [order aff'd](#), 665 F.2d 222 (8th Cir. 1981).

21 U.S.—[Warren v. National Ass'n of Secondary School Principals](#), 375 F. Supp. 1043 (N.D. Tex. 1974).

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16D C.J.S. Constitutional Law § 2390

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

1. In General

§ 2390. Trust property or funds

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4088, 4089

The validity of legislation relating to trust property or funds under the due process of law guaranty depends on the nature of the trust and its purpose, the provisions of the legislation, the nature of the trust beneficiaries' rights or interests under the trust, and whether a retroactive application of a statute is considered.

In relation to the position of trustees of trusts, due process requires affording notice and an opportunity to be heard on the question of removal from service.¹ As to termination of a trust, the trustee is not necessarily deprived of due process by failure to be given notice of proceedings to terminate the trust where the trust instrument specifies that the trustee exercises duties only in a fiduciary capacity and the court can revoke the trust at any time.² Furthermore, procedural shortcomings are not a violation in the absence of prejudice.³ Asset creditors are also entitled to a meaningful opportunity to contest the transfer of assets to a trust by the debtor with notice of the creditor's claim.⁴ Trust beneficiaries are entitled to notice and adequate procedural safeguards in fiduciary breach proceedings against the trustee pertaining to a trust settlement.⁵

Potential trustees under a charitable testamentary trust, and the organization entitled to nominate trustees, are entitled under due process to notice of a proceeding to modify the terms of the trust since the trustees and the organization possess protectable property interests.⁶

Due process occurs in an action to impose a constructive trust when the party in possession of the property is accorded an opportunity to be heard in court on the issue of whether a constructive trust should be imposed.⁷

A statute authorizing a trustee under a will, trust deed, or other instrument, to pay a percentage of the principal to the life tenant regardless of principal advances for expenses and the cost of capital improvements, does not violate the constitutional guaranty against taking property without due process since the statute does not affect substantive rights but is merely remedial, procedural, and administrative.⁸ It does not violate due process even though applied to an estate the administration of which was begun before enactment of the statute.⁹

The retroactive application of a statutory amendment to affect income distributions under a testamentary trust, altering the meaning of testamentary terms to include an adopted child, is an unreasonable retroactive application in violation of the due process rights of income beneficiaries of the trust since while the statutory amendment serves a legitimate public interest in the equal treatment of adopted descendants, there is no emergency need to do so, the income beneficiaries have vested protectable interests in the trust, and the amendment is not limited to situations in which it may be applied retroactively without creating an injustice.¹⁰ The retroactive application of a statutory presumption that an adopted child is to be treated as a natural child when determining that the adopted child of a testator's grandchild is part of a testamentary trust beneficiary class, which is limited to the "lawful descendants" of the testator's son and daughter-in-law, does not violate due process since the presumption is procedural and no one has a vested right in any particular mode of procedure.¹¹ Retroactively allowing trustees to receive more than one commission from the trust principal is not a violation of the rights of trust beneficiaries under due process, when the purpose is to ensure that trustees receive reasonable compensation for their services, and retroactively allowing additional compensation to trustees for trusts that were created when only a single commission was allowed is a rational means to accomplish the legislature's purpose.¹²

Due process does not require notice of conditions precedent to potential beneficiaries of a trust, and there are no constitutional dimensions to a settlor's choice of beneficiaries, since the settlor is not a state actor.¹³ However, a beneficial interest under a trust, contingent on the holder's survival of a parent, is sufficiently definite to warrant protection under due process, requiring notice and an opportunity to be heard before the beneficiary is deprived of the interest in trust settlement proceedings.¹⁴ A finding that a child born out-of-wedlock is not a beneficiary under a trust that limits beneficiaries to the settlor's "legitimate" issue is not a violation of due process since the child does not have any protectable interest in the nature of a "right" to take under the trust.¹⁵

Revocable trusts.

The retroactive application of a statute to a revocable trust is not a due process violation when it provides that the property of the settlor's revocable trust is subject to the claims of the settlor's creditors and the costs of the administration of the settlor's estate since it does not affect any vested rights of trust's beneficiaries who have no vested rights but merely an expectancy.¹⁶ The retroactive application of statutes to a revocable trust, when providing that a donative transfer to a trust beneficiary is presumptively invalid if drafted by the beneficiary, but allowing a rebuttal of the presumption by clear and convincing evidence, is not a violation of the beneficiary's due process rights since the beneficiary does not have vested interest in the distribution under a revocable trust or its partial revocation.¹⁷

Footnotes

- 1 Mich.—*In re Duane v. Baldwin Trust*, 274 Mich. App. 387, 733 N.W.2d 419 (2007), *aff'd* but criticized on other grounds, 480 Mich. 915, 739 N.W.2d 868 (2007).
Ohio—*Ulinski v. Byers*, 2015-Ohio-282, 2015 WL 340977 (Ohio Ct. App. 9th Dist. Summit County 2015).
Wyo.—*Garwood v. Garwood*, 2010 WY 91, 233 P.3d 977 (Wyo. 2010).
Pretrial hearing sufficient for due process
Tex.—*Soefje v. Jones*, 270 S.W.3d 617 (Tex. App. San Antonio 2008).
Sufficient notice for interim trustee appointment
Fla.—*Godfrey-Aurand v. Godfrey*, 855 So. 2d 1278 (Fla. 3d DCA 2003).
2 Tex.—*Bank of Texas, N.A., Trustee v. Mexia*, 135 S.W.3d 356 (Tex. App. Dallas 2004).
3 Ohio—*Ulinski v. Byers*, 2015-Ohio-282, 2015 WL 340977 (Ohio Ct. App. 9th Dist. Summit County 2015).
Tex.—*Bank of Texas, N.A., Trustee v. Mexia*, 135 S.W.3d 356 (Tex. App. Dallas 2004).
4 Alaska—*Zok v. Estate of Collins*, 84 P.3d 1005 (Alaska 2004).
5 N.M.—*In re Norwest Bank of New Mexico, N.A.*, 134 N.M. 516, 2003-NMCA-128, 80 P.3d 98 (Ct. App. 2003).
6 Cal.—*Estate of Sigourney*, 93 Cal. App. 4th 593, 113 Cal. Rptr. 2d 274 (6th Dist. 2001).
7 Ohio—*Fischbach v. Mercuri*, 184 Ohio App. 3d 105, 2009-Ohio-4790, 919 N.E.2d 804 (2d Dist. Montgomery County 2009).
Adequacy of pretrial notice
Remand was required in a probate proceeding for further proceedings on the narrow issue of whether two of a testator's sons actually received knowledge, as required under due process principles, of a judgment imposing a constructive trust on certain real property conveyed to the testator's four children.
Alaska—*In re Estate of Fields*, 219 P.3d 995 (Alaska 2009), as modified on other grounds on denial of reh'g, (Dec. 16, 2009).
8 U.S.—*Demorest v. City Bank Farmers Trust Co.*, 321 U.S. 36, 64 S. Ct. 384, 88 L. Ed. 526 (1944).
9 U.S.—*Demorest v. City Bank Farmers Trust Co.*, 321 U.S. 36, 64 S. Ct. 384, 88 L. Ed. 526 (1944).
10 Mass.—*Bird Anderson v. BNY Mellon, N.A.*, 463 Mass. 299, 974 N.E.2d 21 (2012).
11 Ill.—*First Nat. Bank of Chicago v. King*, 165 Ill. 2d 533, 209 Ill. Dec. 199, 651 N.E.2d 127 (1995).
12 Pa.—*Estate of Fridenberg v. Com.*, 613 Pa. 281, 33 A.3d 581 (2011).
13 Ill.—*In re Estate of Feinberg*, 235 Ill. 2d 256, 335 Ill. Dec. 863, 919 N.E.2d 888 (2009).
14 Alaska—*Barber v. Barber*, 837 P.2d 714 (Alaska 1992).
15 N.H.—*In re Dumaine*, 135 N.H. 103, 600 A.2d 127 (1991).
16 N.C.—*Livesay v. Carolina First Bank*, 192 N.C. App. 234, 665 S.E.2d 158 (2008).
17 Cal.—*Bank of America v. Angel View Crippled Children's Foundation*, 72 Cal. App. 4th 451, 85 Cal. Rptr. 2d 117 (1st Dist. 1999).

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16D C.J.S. Constitutional Law § 2391

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

1. In General

§ 2391. Abandoned, lost, or unclaimed property; escheats

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4090

The due process of law guaranty applies to the escheat of abandoned, lost, or unclaimed property.

Statutes providing for escheats and sale of abandoned or unclaimed property must comply with due process by providing adequate notice and a hearing to potential claimants after the state acquires the property,¹ but the prior existence of the escheat statute may be sufficient constructive notice, without more.² A nonpermanent escheat process for unclaimed property, without notice or hearing, is not a violation when the intake and limited title transfer are practically and legally attributable to the abandonment or inattention of the owners in the face of conditions permitting them to avoid the result.³

The application of an escheats statute to unclaimed, unredeemed sale gift certificates as abandoned property escheating to the state is not a deprivation of the gifting merchant's property without due process rights when the escheats statute is in effect before the certificates are sold by the merchant.⁴ The State's failure to notify shareholders on receipt of their unclaimed shares of stock and prior to selling those shares does not violate the shareholders' procedural due process rights since the unclaimed property law puts shareholders on notice that their interests will escheat to the State under specified conditions.⁵ Even in the

absence of statutory compliance, there is no due process deprivation by the sale of unclaimed property as escheated when the owners of the unclaimed property are not deprived of the proceeds of the sale.⁶

An escheats statute is generally sustainable under substantive due process as rationally based and reasonably related to legitimate state interests in protecting the state's property owners and modernizing the state's unclaimed property laws even if revenue raising is a primary purpose.⁷ The retroactive amendment of a state's unclaimed property statute to reduce the period after which travelers checks are presumed abandoned rationally furthers a legitimate state purpose as required for the statute to withstand a challenge on substantive due process grounds.⁸

Dormant bank accounts.

A state, by a procedure satisfying constitutional requirements, may escheat or compel surrender to it of bank deposit balances when there is substantial ground for belief that they have been abandoned or forgotten, especially when the state acquires them subject to all lawful demands of the depositors.⁹ A person with unclaimed funds in bank account is entitled under due process to not only the principal but also to any earned interest on a claim against the state under an unclaimed property act, when the interest is confiscated prematurely and state did not charge fee for its services in taking custody of unclaimed property and trying to locate owner.¹⁰

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Footnotes

- 1 U.S.—*Taylor v. Yee*, 780 F.3d 928 (9th Cir. 2015); *Taylor v. Westly*, 525 F.3d 1288 (9th Cir. 2008).
 Tex.—*Coleman v. Victoria County*, 385 S.W.3d 608 (Tex. App. Corpus Christi 2012).
Certified mail sufficient notice
 U.S.—*Schluga v. City of Milwaukee*, 101 F.3d 60 (7th Cir. 1996).
Sale void with insufficient notice
 Fla.—*Kirchoff v. Jenne*, 819 So. 2d 959 (Fla. 4th DCA 2002).
- 2 Cal.—*Fong v. Westly*, 117 Cal. App. 4th 841, 12 Cal. Rptr. 3d 76 (3d Dist. 2004).
 N.Y.—*Kimberley's A Day Spa, Ltd. v. Hevesi*, 11 Misc. 3d 954, 810 N.Y.S.2d 616 (Sup 2006).
- 3 Cal.—*Morris v. Chiang*, 163 Cal. App. 4th 753, 77 Cal. Rptr. 3d 799 (2d Dist. 2008).
- 4 N.Y.—*Kimberley's A Day Spa, Ltd. v. Hevesi*, 11 Misc. 3d 954, 810 N.Y.S.2d 616 (Sup 2006).
- 5 Cal.—*Fong v. Westly*, 117 Cal. App. 4th 841, 12 Cal. Rptr. 3d 76 (3d Dist. 2004).
- 6 Cal.—*Harris v. Westly*, 116 Cal. App. 4th 214, 10 Cal. Rptr. 3d 343 (2d Dist. 2004), as modified on other grounds, (Mar. 3, 2004).
- 7 U.S.—*New Jersey Retail Merchants Ass'n v. Sidamon-Eristoff*, 669 F.3d 374 (3d Cir. 2012).
- 8 U.S.—*American Exp. Travel Related Services, Inc. v. Sidamon-Eristoff*, 669 F.3d 359 (3d Cir. 2012);
American Exp. Travel Related Services Co., Inc. v. Kentucky, 641 F.3d 685 (6th Cir. 2011).
- 9 U.S.—*Anderson Nat. Bank v. Lockett*, 321 U.S. 233, 64 S. Ct. 599, 88 L. Ed. 692, 151 A.L.R. 824 (1944).
Escheat of deposits in national bank
 U.S.—*Roth v. Delano*, 338 U.S. 226, 70 S. Ct. 22, 94 L. Ed. 13 (1949).
- 10 U.S.—*Cerajeski v. Zoeller*, 735 F.3d 577 (7th Cir. 2013).

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16D C.J.S. Constitutional Law § 2392

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

1. In General

§ 2392. Contracts; validity and validation

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4255, 4256

Valid contracts are property and may constitute protected property interests for due process purposes, not subject to interference without due process of law.

Valid contracts are property, for due process purposes, whether the obligor is a private individual, a municipality, a state, or the United States,¹ and the interests created by contracts may be property interests for due process purposes,² but not every contract creates protected property interests under due process.³ State-created contractual rights do not rise to level of a fundamental interest protected by substantive due process, and routine state-created contractual rights are not so vital that neither liberty nor justice would exist if they were sacrificed.⁴

The mere existence of a contract,⁵ or a simple breach of contract, does not rise to the level of a deprivation of procedural due process rights.⁶ A breach of contract that does not give rise to a deprivation of a protectable property interest is exclusively remediable in an action for breach of contract and not in an action for a violation of procedural due process.⁷

To have property interest in a contractual benefit that is protected by the Due Process Clause, a person must have legitimate claim of entitlement to it⁸ that government action may not abridge⁹ and not a mere unilateral expectation.¹⁰ Procedural requirements alone, as in public contracting processes, do not ordinarily transform a unilateral expectation of contracting into a constitutionally protected property interest, and procedural requirements do so only if intended to be a significant substantive restriction on decision-making.¹¹ A contract that is unenforceable, as when made to depend on the act or consent of a third person over whom neither party has control, does not create an interest for due process purposes.¹²

To determine whether a contractual right can be characterized as a property interest that is protected by procedural due process, a court must look to whether the interest involved would be protected under state law and must weigh the importance to the holder of the right.¹³ There is no viable claim for a violation of due process when the contract does not give rise to a greater interest than the contract itself, and so wrongful termination of a contract may be fully remedied by a common-law breach of contract action.¹⁴ A pure commercial interest is not the kind of contractual interest classified as a property interest for due process purposes.¹⁵

Liberty of contract is not an absolute concept,¹⁶ and while the right to contract is a part of the liberty protected by due process guarantees, it is subject to such restraints as a state in the exertion of its police power reasonably may put upon it to safeguard the public interest.¹⁷ Under the protection of due process, sovereign authority cannot be exercised to invalidate, release, or extinguish contractual rights, nor may sovereign authority be exercised by acts which, without destroying the contracts, derogates from substantial contractual rights.¹⁸ If a statute or act of Congress is not an exercise of the police or other paramount power, for the general welfare of the public, it is invalid if it operates to take away a vested property right by impairing a contract obligation, without due process.¹⁹ The legislature may not render void contracts of natural persons domiciled within the state when the contracts are made and to be performed without the state.²⁰ When determining whether a statute impairing a contractual obligation is unconstitutional as a deprivation of rights in violation of due process, the reviewing court must determine: (1) whether the state's actions impaired an obligation of the contract, and (2) whether the impairment, if any, was reasonable and necessary to serve an important public purpose.²¹

In evaluating whether an evidentiary hearing is required by due process before modifying or terminating a contract, the courts apply a three-part balancing test, considering: (1) the private interest affected, (2) the risk that the procedures used will result in erroneous deprivation of that private interest and the probable value of additional or substitute procedural safeguards, and (3) the state's interest in the procedures provided, including the administrative burden and expense that additional procedures would require.²²

State approval, acquiescence, or enforcement of a private contract is not state action for purposes of a due process claim.²³ A private contract can support a due process claim if the state exercises coercive power or provides significant encouragement, either overt or covert, such that the choice to violate or enforce a contract is deemed to be that of the state; under such circumstances, the enforcement of the contract becomes state action.²⁴

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Footnotes

- 1 U.S.—*Caesars Massachusetts Management Co., LLC v. Crosby*, 778 F.3d 327 (1st Cir. 2015) (quoting *Lynch v. U.S.*, 292 U.S. 571, 54 S. Ct. 840, 78 L. Ed. 1434 (1934)).
Right to contract is property right
U.S.—*EJS Properties, LLC v. City of Toledo*, 698 F.3d 845 (6th Cir. 2012), cert. denied, 133 S. Ct. 1635, 185 L. Ed. 2d 617 (2013).

N.C.—*Dysart v. Cummings*, 181 N.C. App. 641, 640 S.E.2d 832 (2007), decision aff'd, 361 N.C. 580, 650 S.E.2d 593 (2007).

2 U.S.—*EJS Properties, LLC v. City of Toledo*, 698 F.3d 845 (6th Cir. 2012), cert. denied, 133 S. Ct. 1635, 185 L. Ed. 2d 617 (2013); *Robbins v. U.S. Bureau of Land Management*, 438 F.3d 1074 (10th Cir. 2006).
Minn.—*C.O. v. Doe*, 757 N.W.2d 343 (Minn. 2008).

Miss.—*Harris v. Mississippi Valley State University*, 873 So. 2d 970, 188 Ed. Law Rep. 562 (Miss. 2004).

Wash.—*In re Estate of Hayes*, 185 Wash. App. 567, 342 P.3d 1161 (Div. 3 2015).

Right of payment from state

Vt.—*Luck Bros., Inc. v. Agency of Transp.*, 2014 VT 59, 99 A.3d 997 (Vt. 2014).

Types of protected contracts interests

Two general types of contract rights are recognized as property protected under due process: (1) where the contract confers a protected status; or (2) where the contract itself includes a provision that the state entity can terminate the contract only for cause.

Cal.—*Benn v. County of Los Angeles*, 150 Cal. App. 4th 478, 58 Cal. Rptr. 3d 563 (2d Dist. 2007).

3 U.S.—*Barton v. City of Bristol*, 294 F. Supp. 2d 184 (D. Conn. 2003); *Ardito v. City of Providence*, 263 F. Supp. 2d 358 (D.R.I. 2003).

Cal.—*Benn v. County of Los Angeles*, 150 Cal. App. 4th 478, 58 Cal. Rptr. 3d 563 (2d Dist. 2007).

No property interest in doing business with government

U.S.—*Agility Defense & Government Services v. U.S. Dept. of Defense*, 739 F.3d 586 (11th Cir. 2013).

4 U.S.—*U.S. ex rel Diop v. Wayne County Community College Dist.*, 242 F. Supp. 2d 497, 174 Ed. Law Rep. 282 (E.D. Mich. 2003); *Peterson v. North Dakota ex rel. North Dakota University System*, 240 F. Supp. 2d 1055, 174 Ed. Law Rep. 195 (D.N.D. 2003).

5 U.S.—*Caesars Massachusetts Management Co., LLC v. Crosby*, 778 F.3d 327 (1st Cir. 2015).

6 U.S.—*Caesars Massachusetts Management Co., LLC v. Crosby*, 778 F.3d 327 (1st Cir. 2015); *Dover Elevator Co. v. Arkansas State University*, 64 F.3d 442, 103 Ed. Law Rep. 49 (8th Cir. 1995); *Rodgers v. University of Missouri Bd. of Curators*, 2014 WL 4843909 (E.D. Mo. 2014).

7 U.S.—*Grasson v. Board of Educ. of Town of Orange*, 24 F. Supp. 3d 136, 311 Ed. Law Rep. 244 (D. Conn. 2014).

8 U.S.—*Caesars Massachusetts Management Co., LLC v. Crosby*, 778 F.3d 327 (1st Cir. 2015); *City of Pontiac Retired Employees Ass'n v. Schimmel*, 751 F.3d 427 (6th Cir. 2014).

Conn.—*Columbia Air Services, Inc. v. Department of Transp.*, 293 Conn. 342, 977 A.2d 636 (2009).

Minn.—*C.O. v. Doe*, 757 N.W.2d 343 (Minn. 2008).

Winning bidder on public contract

Cal.—*Advanced Real Estate Services, Inc. v. Superior Court*, 196 Cal. App. 4th 338, 128 Cal. Rptr. 3d 166 (4th Dist. 2011).

9 U.S.—*Caesars Massachusetts Management Co., LLC v. Crosby*, 778 F.3d 327 (1st Cir. 2015).

10 U.S.—*Robbins v. U.S. Bureau of Land Management*, 438 F.3d 1074 (10th Cir. 2006); *Resource Services, LLC v. City of Bridgeport*, 590 F. Supp. 2d 347 (D. Conn. 2008).

Conn.—*Columbia Air Services, Inc. v. Department of Transp.*, 293 Conn. 342, 977 A.2d 636 (2009).

No interest in contract terminable at will

N.Y.—*Red Apple Child Development Center v. Community School Districts Two*, 303 A.D.2d 156, 756 N.Y.S.2d 527, 174 Ed. Law Rep. 1063 (1st Dep't 2003).

No interest in unawarded contract

Haw.—*AlohaCare v. Department of Human Services*, 127 Haw. 76, 276 P.3d 645 (2012), as corrected, (May 18, 2012).

No interest in prospective contract

Cal.—*Mednik v. State Dept. of Health Care Services*, 175 Cal. App. 4th 631, 96 Cal. Rptr. 3d 112 (2d Dist. 2009).

Pa.—*Stanton-Negley Drug Co. v. Department of Public Welfare*, 943 A.2d 377 (Pa. Commw. Ct. 2008).

No interest in unsuccessful bidder

Miss.—*Nelson v. City of Horn Lake ex. rel. Bd. of Aldermen*, 968 So. 2d 938 (Miss. 2007).

Ohio—*Cleveland Constr., Inc. v. Cincinnati*, 118 Ohio St. 3d 283, 2008-Ohio-2337, 888 N.E.2d 1068 (2008).

11 Cal.—*Benn v. County of Los Angeles*, 150 Cal. App. 4th 478, 58 Cal. Rptr. 3d 563 (2d Dist. 2007).

- 12 U.S.—EJS Properties, LLC v. City of Toledo, 698 F.3d 845 (6th Cir. 2012), cert. denied, 133 S. Ct. 1635, 185 L. Ed. 2d 617 (2013).
- 13 U.S.—Harhay v. Town of Ellington Bd. of Educ., 323 F.3d 206, 174 Ed. Law Rep. 845 (2d Cir. 2003); Williams v. Woodhull Medical and Mental Health Center, 891 F. Supp. 2d 301 (E.D. N.Y. 2012).
- 14 U.S.—211 Eighth, LLC v. Town of Carbondale, 922 F. Supp. 2d 1174 (D. Colo. 2013).
- 15 U.S.—Taake v. County of Monroe, 530 F.3d 538 (7th Cir. 2008).
- 16 Kan.—Double M Const., Inc. v. State Corp. Com'n, 288 Kan. 268, 202 P.3d 7 (2009) (referencing Hartford Accident & Indemnity Co. v. N.O. Nelson Mfg. Co., 291 U.S. 352, 54 S. Ct. 392, 78 L. Ed. 840 (1934)).
- 17 Kan.—Double M Const., Inc. v. State Corp. Com'n, 288 Kan. 268, 202 P.3d 7 (2009) (referencing West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703, 108 A.L.R. 1330 (1937)).
- 18 U.S.—Thorpe v. Housing Authority of City of Durham, 393 U.S. 268, 89 S. Ct. 518, 21 L. Ed. 2d 474 (1969); Westlands Water Dist. v. U.S. Dept. of Interior, Bureau of Reclamation, 850 F. Supp. 1388 (E.D. Cal. 1994).
- 19 U.S.—Lynch v. U.S., 292 U.S. 571, 54 S. Ct. 840, 78 L. Ed. 1434 (1934).
- 20 U.S.—Allgeyer v. State of La., 165 U.S. 578, 17 S. Ct. 427, 41 L. Ed. 832 (1897).
- 21 N.C.—Wiggs v. Edgecombe County, 179 N.C. App. 47, 632 S.E.2d 249 (2006), decision aff'd, 361 N.C. 318, 643 S.E.2d 904 (2007).
- Balancing of interests**
- Pa.—Sanders v. Allegheny Hospital-Parkview Div., 2003 PA Super 349, 833 A.2d 179 (2003).
- 22 Minn.—C.O. v. Doe, 757 N.W.2d 343 (Minn. 2008) (referencing Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)).
- Pa.—Sanders v. Allegheny Hospital-Parkview Div., 2003 PA Super 349, 833 A.2d 179 (2003).
- 23 Wash.—In re Estate of Hayes, 185 Wash. App. 567, 342 P.3d 1161 (Div. 3 2015).
- 24 Wash.—In re Estate of Hayes, 185 Wash. App. 567, 342 P.3d 1161 (Div. 3 2015).

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16D C.J.S. Constitutional Law § 2393

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

1. In General

§ 2393. Regulation of or relating to person's place of residence

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4036

The right to due process protects the right to reside where one chooses and subjects residency restrictions or requirements to constitutional scrutiny under standards varying from a rational basis to heightened scrutiny depending on the nature of the restriction or requirement.

The right to travel under the substantive component of due process encompasses the right to change residences within a state¹ and the right to take up residence in the state of a citizen's choice,² providing a due process basis for invalidating durational residency requirements when not supported by sufficient legitimate state interests.³

A strict level of scrutiny for a compelling state interest applies to the right to travel, as applied to durational residency requirements,⁴ while an intermediate level of scrutiny for a rational basis applies when the right to intrastate travel and a choice of residency is concerned, permitting state action that infringes on the right to localized intrastate movement only if it is narrowly tailored to serve significant government interests, not necessarily compelling ones.⁵ For purposes of the due process protection of the interstate right to travel, a impermissible durational residency requirement, subject to strict scrutiny, is a condition on a public benefit when the availability or level of benefit is based on the length of time that the individual has lived within a

political entity, while a permissible bona fide residency requirement, subject to a rational basis test for a legitimate government interest only requires that individual live within a given political entity without regard to the length of time that individual has resided there.⁶

A candidate for city firefighter position states a claim under substantive component due process that the right to intrastate travel is violated by denial of consideration for appointment pursuant to city ordinance conditioning an appointment on city residency for at least 12 months prior, alleging that the ordinance is not narrowly tailored to achieve legitimate government interest in ensuring the safety of city residents by employing firefighters who were familiar with the community and have knowledge of local geography, when the firefighter has served as a city firefighter for 25 years before.⁷

A statute that prohibits sex offenders from living within 2,000 feet of an elementary or secondary school or child care facility does not violate the offender's substantive due process rights regarding freedom of choice in residence, under the rational basis standard, since there is a reasonable fit between the government interest in preventing recidivism by sex offenders and the means utilized to advance that interest.⁸

A statute defining state residency for purposes of obtaining a hunting license is not unconstitutionally vague because other statutes, such as a statute governing general residency requirements, or those governing registration, voting, seeking election, bidding on public contracts, or registering motor vehicle fleets define residency differently.⁹

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Footnotes

- 1 U.S.—*McCool v. City of Philadelphia*, 494 F. Supp. 2d 307 (E.D. Pa. 2007).
- 2 U.S.—*Jones v. Helms*, 452 U.S. 412, 101 S. Ct. 2434, 69 L. Ed. 2d 118 (1981); *North Carolina ex rel. Kasler v. Howard*, 323 F. Supp. 2d 675 (W.D. N.C. 2003), *aff'd*, 78 Fed. Appx. 231 (4th Cir. 2003).
- 3 U.S.—*Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974); *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).
- 4 U.S.—*Fayerweather v. Town of Narragansett Housing Authority*, 848 F. Supp. 19 (D.R.I. 1994).
- 5 U.S.—*McCool v. City of Philadelphia*, 494 F. Supp. 2d 307 (E.D. Pa. 2007).
Iowa—*State v. Seering*, 701 N.W.2d 655 (Iowa 2005).
- 6 U.S.—*Fayerweather v. Town of Narragansett Housing Authority*, 848 F. Supp. 19 (D.R.I. 1994).
- 7 U.S.—*McCool v. City of Philadelphia*, 494 F. Supp. 2d 307 (E.D. Pa. 2007).
- 8 Iowa—*State v. Seering*, 701 N.W.2d 655 (Iowa 2005).
- 9 Mont.—*State v. Britton*, 2001 MT 141, 306 Mont. 24, 30 P.3d 337 (2001).

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16D C.J.S. Constitutional Law § 2394

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

2. Animals

§ 2394. General standards and principles

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4310 to 4314

Reasonable regulations with respect to animals do not violate due process, but provisions authorizing the summary seizure, detention, or destruction of animals, without notice or hearing, are void unless the destruction is essential to public health and safety.

Under the constitutional guaranty of due process of law, the government may make reasonable regulations with respect to animals.¹ Animal control statutes must reasonably define their terms, sufficient for understanding by an ordinary person, in order to survive due process challenges for vagueness.²

A pet owner or animal owner has a substantial protectable interest in the animal for due process purposes related to the government's seizure of the animal, requiring reasonable procedural safeguards sustainable on a rational basis,³ generally permitting a postseizure notice and hearing.⁴ Safeguards include a due process right to notice and an opportunity for a hearing prior to the permanent termination of the owner's interest in a seized animal.⁵ The interest is not a fundamental constitutional

right as would require strict scrutiny and compelling state interests.⁶ The seizure and disposal of neglected animals is permissible without compensation and is not a taking for purposes of due process.⁷

A private individual has no protectable property interest in a wild animal,⁸ nor in a particular animal that is not one permitted as a legally licensed animal.⁹ Wild animals belong to the state and not to private individuals,¹⁰ as long as the animals remain wild, unconfined, and undomesticated.¹¹ A person has no protectable property interest in the state's wildlife or in the receipt of a permit for the rehabilitation of wildlife when the issuance of state permits is discretionary and reasonably related to the state's legitimate governmental interest as the owner of wildlife.¹² The existence of a protectable property interest in particular species of animals is subject to the applicable local animal control laws.¹³

Due process is not denied by reasonable regulations declaring it unlawful to keep livestock of any kind within a specified zone within a municipality,¹⁴ restricting the possession of wild animals within municipal limits,¹⁵ prohibiting the possession of particular exotic animals,¹⁶ or regulating or prohibiting dangerous animals.¹⁷ In the absence of an emergency, however, an animal control officer's discretion alone does not suffice to satisfy due process requirements as to the dangerousness of a particular animal, particularly when it becomes the basis for a criminal conviction rather than a civil matter.¹⁸

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Footnotes

- 1 U.S.—*Scheffe v. City of St. Louis*, 194 U.S. 373, 24 S. Ct. 676, 48 L. Ed. 1024 (1904); *Jones v. Brim*, 165 U.S. 180, 17 S. Ct. 282, 41 L. Ed. 677 (1897); *Greater Chicago Combine and Center, Inc. v. City of Chicago*, 431 F.3d 1065 (7th Cir. 2005).
Ohio—*Toledo v. Tellings*, 114 Ohio St. 3d 278, 2007-Ohio-3724, 871 N.E.2d 1152 (2007).
Substantive due process test
U.S.—*Maldonado v. Fontanes*, 568 F.3d 263 (1st Cir. 2009).
Ohio—*Akron ex rel. Christman-Resch v. Akron*, 159 Ohio App. 3d 673, 2005-Ohio-715, 825 N.E.2d 189 (9th Dist. Summit County 2005).
- 2 Cal.—*Concerned Dog Owners of California v. City of Los Angeles*, 194 Cal. App. 4th 1219, 123 Cal. Rptr. 3d 774 (2d Dist. 2011).
Conn.—*Town of Bethlehem v. Acker*, 153 Conn. App. 449, 102 A.3d 107 (2014), certification denied, 315 Conn. 908, 105 A.3d 235 (2014).
Me.—*State v. Peck*, 2014 ME 74, 93 A.3d 256 (Me. 2014).
Mo.—*State ex rel. Zobel v. Burrell*, 167 S.W.3d 688 (Mo. 2005).
Bites without provocation
Alaska—*Hagblom v. City of Dillingham*, 191 P.3d 991 (Alaska 2008).
Caging of snakes is vague requirement
Cal.—*People v. Carlson*, 45 Cal. App. 4th Supp. 1, 53 Cal. Rptr. 2d 568 (App. Dep't Super. Ct. 1996).
- 3 U.S.—*Maldonado v. Fontanes*, 568 F.3d 263 (1st Cir. 2009); *O'Neill v. Louisville/Jefferson County Metro Government*, 662 F.3d 723 (6th Cir. 2011).
Alaska—*Hagblom v. City of Dillingham*, 191 P.3d 991 (Alaska 2008).
Pa.—*Snead v. Society for Prevention of Cruelty to Animals of Pennsylvania*, 2007 PA Super 204, 929 A.2d 1169 (2007), order aff'd, 604 Pa. 166, 985 A.2d 909 (2009).
Interest in domesticated animals
S.D.—*State v. Fifteen Impounded Cats*, 2010 SD 50, 785 N.W.2d 272 (S.D. 2010).
- 4 U.S.—*Wall v. City of Brookfield*, 406 F.3d 458 (7th Cir. 2005); *Reams v. Irvin*, 561 F.3d 1258 (11th Cir. 2009).
Fla.—*Brinkley v. County of Flagler*, 769 So. 2d 468 (Fla. 5th DCA 2000).
Me.—*State v. Malpher*, 2008 ME 32, 947 A.2d 484 (Me. 2008).

- 5 N.Y.—*Erie County Soc. for Prevention of Cruelty to Animals v. Hoskins*, 91 A.D.3d 1354, 939 N.Y.S.2d 674 (4th Dep't 2012).
- U.S.—*Porter v. DiBlasio*, 93 F.3d 301 (7th Cir. 1996).
- Inadequate procedures before destruction**
- Pa.—*Snead v. Society for Prevention of Cruelty to Animals of Pennsylvania*, 2007 PA Super 204, 929 A.2d 1169 (2007), order aff'd, 604 Pa. 166, 985 A.2d 909 (2009).
- 6 U.S.—*Koorn v. Lacey Tp.*, 78 Fed. Appx. 199 (3d Cir. 2003); *Wilkins v. Daniels*, 913 F. Supp. 2d 517 (S.D. Ohio 2012), aff'd, 744 F.3d 409 (6th Cir. 2014).
- 7 U.S.—*Porter v. DiBlasio*, 93 F.3d 301 (7th Cir. 1996); *Reams v. Irvin*, 561 F.3d 1258 (11th Cir. 2009).
- Free-roaming cats trapped and euthanized**
- Ohio—*Akron ex rel. Christman-Resch v. Akron*, 159 Ohio App. 3d 673, 2005-Ohio-715, 825 N.E.2d 189 (9th Dist. Summit County 2005).
- 8 U.S.—*Bilida v. McCleod*, 211 F.3d 166 (1st Cir. 2000).
- Fla.—*State v. Butler*, 587 So. 2d 1391 (Fla. 3d DCA 1991).
- Ohio—*Carrelli v. Dept. of Natural Resources*, 2010-Ohio-1516, 2010 WL 1268163 (Ohio Ct. App. 12th Dist. Brown County 2010).
- Tex.—*Coastal Habitat Alliance v. Public Utility Com'n of Texas*, 294 S.W.3d 276 (Tex. App. Austin 2009).
- 9 U.S.—*Bilida v. McCleod*, 211 F.3d 166 (1st Cir. 2000).
- 10 Ohio—*Carrelli v. Dept. of Natural Resources*, 2010-Ohio-1516, 2010 WL 1268163 (Ohio Ct. App. 12th Dist. Brown County 2010).
- Tex.—*Coastal Habitat Alliance v. Public Utility Com'n of Texas*, 294 S.W.3d 276 (Tex. App. Austin 2009).
- 11 Tex.—*Coastal Habitat Alliance v. Public Utility Com'n of Texas*, 294 S.W.3d 276 (Tex. App. Austin 2009).
- 12 Ohio—*Carrelli v. Dept. of Natural Resources*, 2010-Ohio-1516, 2010 WL 1268163 (Ohio Ct. App. 12th Dist. Brown County 2010).
- 13 U.S.—*Clark v. City of Draper*, 168 F.3d 1185 (10th Cir. 1999).
- 14 N.M.—*Mitchell v. City of Roswell*, 1941-NMSC-007, 45 N.M. 92, 111 P.2d 41 (1941).
- 15 U.S.—*Greater Chicago Combine and Center, Inc. v. City of Chicago*, 431 F.3d 1065 (7th Cir. 2005).
- S.C.—*Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 476 S.E.2d 477 (1996).
- 16 Wash.—*Rhoades v. City of Battle Ground*, 115 Wash. App. 752, 63 P.3d 142 (Div. 2 2002).
- Ferrets banned**
- N.Y.—*Glass v. City of New York*, 2002 WL 1461895 (N.Y. Sup 2002).
- 17 Ky.—*Bess v. Bracken County Fiscal Court*, 210 S.W.3d 177 (Ky. Ct. App. 2006).
- Ohio—*Toledo v. Tellings*, 114 Ohio St. 3d 278, 2007-Ohio-3724, 871 N.E.2d 1152 (2007).
- 18 S.D.—*City of Pierre v. Blackwell*, 2001 SD 127, 635 N.W.2d 581 (S.D. 2001).

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16D C.J.S. Constitutional Law § 2395

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

2. Animals

§ 2395. Prevention or eradication of disease

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4310 to 4312

Due process is not denied by regulations to prevent or eradicate disease in animals, and laws for the summary destruction of diseased animals are valid, without providing for compensation of the owners, or for a prior judicial hearing.

The state may, in the exercise of its power to promote the public health, safety, or welfare, make reasonable regulations for the prevention or eradication of disease in animals,¹ and for such purpose may provide for the inspection and testing of animals to ascertain whether they have any contagious or infectious disease,² and may authorize the treatment of diseased animals at the expense of the owner.³

A statute may require animal owners to provide necessary medical attention to animals and is not vague in requiring action by the owner when the animal is or has been suffering illness, injury, disease, or excessive parasitism.⁴

Regulations requiring cattle or sheep to be dipped, either to prevent or to eradicate tick fever infection, are not invalid as denying due process of law⁵ even though the owner is not given notice and opportunity to be heard in opposition to the dipping.⁶ If the rights of individuals are violated by arbitrary, unreasonable, or illegal action in the administration of the law, such action

is unconstitutional,⁷ but the statute itself is not thereby rendered void, a remedy being available to the owner in the course of legal proceedings.⁸ However, a statute making the failure of a cattle owner to comply with an order for dipping a misdemeanor denies due process when there is no definite provision for notice to the owner.⁹

Due process does not preclude statutes requiring owners of cattle to submit them to a brucellosis test¹⁰ or tuberculin test,¹¹ and the fact that there is no right of appeal from the finding of the tester is immaterial.¹²

The legislature may, without violation of due process of law, authorize the destruction of animals for the purpose of preventing the spreading of disease or pests,¹³ without providing for a judicial hearing when the owner is afforded the opportunity subsequently to litigate whether the animal was in fact diseased and the owner has a remedy in damages in the event it is proved that the animal was not diseased.¹⁴ Due process is met when a postseizure hearing is afforded before the animals, suspected of a dangerous infection, are destroyed¹⁵ and when an adequate postdeprivation compensation scheme is provided.¹⁶

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Footnotes

- 1 U.S.—*Clark v. City of Draper*, 168 F.3d 1185 (10th Cir. 1999); *Professional Dog Breeders Advisory Council, Inc. v. Wolff*, 752 F. Supp. 2d 575 (E.D. Pa. 2010).
Animals believed to be diseased
 Ky.—*Spillman v. Beauchamp*, 362 S.W.2d 33, 2 A.L.R.3d 814 (Ky. 1962).
Quarantine of animals
 U.S.—*Webster v. Moquin*, 175 F. Supp. 2d 315 (D. Conn. 2001); *Case v. U.S. Dept. of Agriculture*, 642 F. Supp. 341 (M.D. Pa. 1986), judgment aff'd in part, appeal dismissed in part, 829 F.2d 30 (3d Cir. 1987).
 Ark.—*Winters v. State*, 301 Ark. 127, 782 S.W.2d 566 (1990).
- 2 Va.—*Stickley v. Givens*, 176 Va. 548, 11 S.E.2d 631 (1940).
Hearing before seizure for rabies infection
 U.S.—*Clark v. City of Draper*, 168 F.3d 1185 (10th Cir. 1999).
Warrant required to inspect for diseased bees
 U.S.—*Cox v. Cache County*, 18 F. Supp. 3d 1251 (D. Utah 2014).
- 3 Wyo.—*Arbuckle v. Pflaeging*, 20 Wyo. 351, 123 P. 918 (1912).
- 4 Me.—*State v. Peck*, 2014 ME 74, 93 A.3d 256 (Me. 2014).
- 5 Fla.—*Whitaker v. Parsons*, 80 Fla. 352, 86 So. 247 (1920).
 Miss.—*Moss v. Mississippi Live Stock Sanitary Board*, 154 Miss. 765, 122 So. 776 (1929).
- 6 Ga.—*Rowland v. Morris*, 152 Ga. 842, 111 S.E. 389 (1922).
- 7 Ga.—*Gill v. Cox*, 163 Ga. 618, 137 S.E. 40 (1927).
- 8 Fla.—*Whitaker v. Parsons*, 80 Fla. 352, 86 So. 247 (1920).
- 9 Tex.—*Ex parte Leslie*, 87 Tex. Crim. 476, 223 S.W. 227 (1920).
- 10 Ark.—*Burt v. Arkansas Livestock and Poultry Com'n*, 278 Ark. 236, 644 S.W.2d 587 (1983).
- 11 U.S.—*Aguiar & Bello v. Brock*, 24 F. Supp. 692 (S.D. Cal. 1938).
 N.H.—*Dederick v. Smith*, 88 N.H. 63, 184 A. 595 (1936).
- 12 Iowa—*Loftus v. Department of Agr. of Iowa*, 211 Iowa 566, 232 N.W. 412 (1930).
- 13 U.S.—*Reichley v. Pennsylvania Dept. of Agriculture*, 427 F.3d 236 (3d Cir. 2005); *Webster v. Moquin*, 175 F. Supp. 2d 315 (D. Conn. 2001).
 Ark.—*Winters v. State*, 301 Ark. 127, 782 S.W.2d 566 (1990).
 S.D.—*South Dakota Dept. of Health v. Heim*, 357 N.W.2d 522 (S.D. 1984).
- 14 U.S.—*Webster v. Moquin*, 175 F. Supp. 2d 315 (D. Conn. 2001).
 Ky.—*Spillman v. Beauchamp*, 362 S.W.2d 33, 2 A.L.R.3d 814 (Ky. 1962).
- 15 U.S.—*Clark v. City of Draper*, 168 F.3d 1185 (10th Cir. 1999).

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U.S.—[Reichley v. Pennsylvania Dept. of Agriculture](#), 427 F.3d 236 (3d Cir. 2005).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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2. Animals

§ 2396. Removal and disposal of dead animals

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4310 to 4312

Due process is not denied by statutes or regulations requiring the removal and disposal of dead animals.

Statutes requiring the removal and disposal of dead animals do not, without more, violate due process, and a warrantless search and seizure to enforce the requirement is not a due process violation when predicated on reasonable and objective information from a third party.¹ Statutes criminalizing the failure to properly dispose of a dead animal are not unconstitutionally vague when easily read to make the knowing and intentional failure an offense.²

An ordinance does not violate due process by granting the exclusive privilege of removing a dead animal to one other than the owner³ or by requiring a permit for such removal by others than the person having a contract with the city for the performance of such services.⁴

An ordinance which immediately on the death of a domestic animal, and before it becomes a nuisance or dangerous to the public health, deprives the owner of property in the body is unreasonable and void.⁵

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Footnotes

- 1 Ind.—[Baxter v. State](#), 891 N.E.2d 110 (Ind. Ct. App. 2008).
- 2 Ind.—[Baxter v. State](#), 891 N.E.2d 110 (Ind. Ct. App. 2008).
- 3 Ind.—[Clason v. State](#), 214 Ind. 630, 17 N.E.2d 92, 121 A.L.R. 726 (1938), judgment *aff'd*, 306 U.S. 439, 59 S. Ct. 609, 83 L. Ed. 858 (1939).
- 4 N.J.—[Schwarz Bros. Co. v. Board of Health of Jersey City](#), 84 N.J.L. 735, 87 A. 463 (N.J. Ct. Err. & App. 1913).
- 5 Va.—[City of Richmond v. Caruthers](#), 103 Va. 774, 50 S.E. 265 (1905).

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2. Animals

§ 2397. Keeping of dogs

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4310 to 4312

Rationally based laws requiring licenses for dogs, and otherwise regulating the keeping of dogs, do not deny due process but must provide adequate procedural safeguards, and a dog owner cannot be deprived of a property interest in a dog without due process.

Generally, dogs are considered property under state law, and an owner's property interest in a dog cannot be deprived by state action without due process of law,¹ but due process does not forbid the states to pass reasonable laws requiring licenses for dogs and otherwise regulating the keeping of dogs.² There is no fundamental constitutional right to keep a dog, and regulations require only a rational basis, reasonably related to legitimate state interests, as for health and safety.³

Procedural due process safeguards are required when the state action potentially effects an immediate deprivation of the dog owner's property interest in terms of ownership or possession by a grant of authority to the state to act but not merely when the governmental regulatory action may lead to a deprivation of the interest at some future time based on unfulfilled conditions.⁴ When the dog owner's property interest is affected, the owner is then entitled to notice and a meaningful opportunity to be heard.⁵

Due process also requires that regulatory provisions provide adequate notice of requirements in a manner that is not vague, enabling people of ordinary intelligence to understand the conduct prohibited and the standards applicable to protect against arbitrary enforcement.⁶ An ordinance violates due process when it allows subjective determinations based on choice of nomenclature by unknown persons and based on unknown standards, leaves a reader of ordinary intelligence confused about the breadth of its coverage, and gives improperly broad discretion to enforcement personnel.⁷

The impoundment⁸ or seizure of dogs under the authority of animal control laws is within the constraints of due process when the owner is afforded notice and an opportunity to be heard,⁹ particularly when the seizure is executed pursuant to a warrant, and a subsequent hearing is afforded.¹⁰ An ordinance providing for the alteration of impounded unaltered dogs, when properly seized for animal control violations, is rationally based and not a violation of substantive due process in itself, but the owners are entitled to proper citation or notice of a violation before a seizure and impoundment and an opportunity to contest the seizure and impoundment.¹¹ An ordinance providing for the sale or transfer of impounded dogs if unclaimed after a specified period does not deprive dog owners of their due process rights when the owners do not take the reasonable step of contacting the local pound to locate the animal and when the town has posted descriptive notices in the town clerk's office, post office, and village store.¹²

Proceedings to determine that a dog is dangerous, within the meaning of applicable regulations, generally must observe due process by providing notice and an opportunity to be heard.¹³ The designation of a dog as "potentially dangerous" after a single biting incident, pursuant to a municipal ordinance, is not a denial of procedural due process without an opportunity for appeal or other challenge, when the designation does not affect the owner's possession or ownership of the dog, even though the designation provides a predicate for a subsequent destruction order after a third biting incident.¹⁴ However, due process requires notice and an opportunity to be heard on a second designation of a dog, raising the level to "dangerous" after a second biting incident, since the city is then authorized to take action affecting the owner's property interests by either destroying the dog or imposing restrictions on the ownership of the dog, such as muzzling, enclosure, proof of liability insurance, and posting of warning signs.¹⁵ A court order that a dog be surrendered for impoundment because it is a "dangerous animal" operates to deprive the dog's owner of a protected property interest, and absent exigent circumstances, a municipality is required to provide the owner with notice, an opportunity to be heard, and a proper adjudication by a judicial officer.¹⁶ Charging a fee to an dog owner desiring to obtain an initial evidentiary review of a dangerous animal declaration, when that is the first opportunity the owner has to engage in a true hearing with judicial review, violates the dog owner's due process rights because the declaration impacts the owner's property and financial interests and potentially subjects the owner to future criminal sanctions.¹⁷

Ordinances comply with due process by permitting the euthanizing of a dog determined to have bitten a person without provocation, when the ordinance provides adequate notice and an opportunity to be heard in an administrative proceeding, and a subsequent right to judicial review.¹⁸ The destruction of an owner's dogs, without adequate notice of a right to reclaim the dogs after seizure on animal cruelty charges that are later dropped, is a due process violation when no procedures are in place to provide notification.¹⁹

A statute governing the inspection of dog breeding operations is consistent with due process in providing for mandatory notice and an opportunity to be heard before the revocation or denial of a license becomes final and in providing adequate notice of the standards applied on inspection.²⁰

Pit bulls.

Strict liability may be imposed on the owners of "pit bulls" for injuries inflicted by the dogs in attacks, within the constraints of substantive due process, since the right to own a pit bull is not a fundamental right, and the protection of public health and safety is a legitimate state interest, particularly as to a breed demonstrating unusual dangerousness.²¹ An ordinance regulating

the ownership of "pit bulls" is not a violation of dog owners' substantive due process rights when the alleged unique public health hazard created by the presence of such dogs within the community justifies the attempt to regulate the breed.²² An act which imposes penalties on owners of pit bulls that cause injury to humans without provocation does not deprive the defendant of fair warning of the proscribed conduct so as to violate the due process guaranty when the act criminalizes a very narrow range of conduct which is easily understood by focusing on two particular dog breeds, unprovoked attacks, and injury in fact.²³ An animal control ordinance which is devoid of any reference to a particular breed but relies instead on the common understanding and usage of the term "pit bull" to define dogs which come within its provisions is not sufficiently definite to meet due process requirements.²⁴

CUMULATIVE SUPPLEMENT

Cases:

Unconstitutional provision of city's dog-control ordinance did not cause any violation of Fourth Amendment rights of dog owners who agreed to turn over their dogs to officers when confronted with allegations that their dogs had violated various provisions of ordinance, and thus such dog owners could not prevail on their *Monell* claim against city based on unconstitutional provision of ordinance that permitted officers to enter any real property without a warrant to investigate menacing or unlicensed dogs; such dogs were seized based on provisions of ordinance that were constitutional, such as rabies quarantine requirement for dogs that bit a person. *U.S. Const. Amend. 4*; 42 U.S.C.A. § 1983. *Hardrick v. City of Detroit, Michigan*, 876 F.3d 238 (6th Cir. 2017).

California statute, which authorized animal control officers to immediately seize an animal if they had reasonable grounds to believe that very prompt action was required to protect health and safety of the animal or others, provided adequate process, in light of interests the statute served, to homeless person whose pet birds were seized by city animal control officers; although homeless person had strong emotional attachment to his pet birds, seizures under the statute were generally executed by persons with training in animal welfare, and government had strong interest in saving birds from poor living conditions and protecting public from pathogens carried by birds. *U.S. Const. Amend. 14*; Cal. Penal Code § 597.1(a)(1). *Recchia v. City of Los Angeles Department of Animal Services*, 889 F.3d 553 (9th Cir. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Maldonado v. Fontanes*, 568 F.3d 263 (1st Cir. 2009); *Leibowitz v. City of Mineola, Tex.*, 660 F. Supp. 2d 775 (E.D. Tex. 2009).
Minn.—*Sawh v. City of Lino Lakes*, 823 N.W.2d 627 (Minn. 2012).
Pa.—*Kohl v. New Sewickley Tp. Zoning Hearing Bd.*, 108 A.3d 961 (Pa. Commw. Ct. 2015).
Wash.—*Mansour v. King County*, 131 Wash. App. 255, 128 P.3d 1241 (Div. 1 2006).
- 2 U.S.—*Nicchia v. People of State of New York*, 254 U.S. 228, 41 S. Ct. 103, 65 L. Ed. 235, 13 A.L.R. 826 (1920).
Me.—*State v. Clarke*, 396 A.2d 228 (Me. 1979).
Miss.—*City of Water Valley v. Trusty*, 343 So. 2d 471 (Miss. 1977).
- 3 U.S.—*Koorn v. Lacey Tp.*, 78 Fed. Appx. 199 (3d Cir. 2003).
- 4 Minn.—*Sawh v. City of Lino Lakes*, 823 N.W.2d 627 (Minn. 2012).
- 5 Minn.—*Sawh v. City of Lino Lakes*, 823 N.W.2d 627 (Minn. 2012).
- 6 Cal.—*Concerned Dog Owners of California v. City of Los Angeles*, 194 Cal. App. 4th 1219, 123 Cal. Rptr. 3d 774 (2d Dist. 2011).

Animal cruelty statute not vague

Me.—*State v. Malpher*, 2008 ME 32, 947 A.2d 484 (Me. 2008).

Vicious dog statute adequate notice

Ohio—*Toledo v. Tellings*, 114 Ohio St. 3d 278, 2007-Ohio-3724, 871 N.E.2d 1152 (2007).

Strict liability statute adequate

U.S.—*Weigel v. Maryland*, 950 F. Supp. 2d 811 (D. Md. 2013), appeal dismissed, (4th Cir. 13-1903) (June 10, 2014).

Iowa—*American Dog Owners Ass'n, Inc. v. City of Des Moines*, 469 N.W.2d 416 (Iowa 1991).

Iowa—*Latiker v. City of Council Bluffs*, 720 N.W.2d 191 (Iowa Ct. App. 2006).

Iowa—*Latiker v. City of Council Bluffs*, 720 N.W.2d 191 (Iowa Ct. App. 2006).

Me.—*State v. Malpher*, 2008 ME 32, 947 A.2d 484 (Me. 2008).

Preseizure notice or hearing not required

U.S.—*Wall v. City of Brookfield*, 406 F.3d 458 (7th Cir. 2005).

Postseizure remedy available

U.S.—*Folkers v. City of Waterloo, Iowa*, 582 F. Supp. 2d 1141 (N.D. Iowa 2008); *Christensen v. Quinn*, 2014 WL 6471378 (D.S.D. 2014).

Me.—*State v. Malpher*, 2008 ME 32, 947 A.2d 484 (Me. 2008).

U.S.—*O'Neill v. Louisville/Jefferson County Metro Government*, 662 F.3d 723 (6th Cir. 2011).

Vt.—*Lamare v. North Country Animal League*, 170 Vt. 115, 743 A.2d 598 (1999).

Fla.—*County of Pasco v. Riehl*, 635 So. 2d 17 (Fla. 1994).

Minn.—*Sawh v. City of Lino Lakes*, 823 N.W.2d 627 (Minn. 2012).

Ohio—*Akron v. Lewis*, 179 Ohio App. 3d 649, 2008-Ohio-6256, 903 N.E.2d 352 (9th Dist. Summit County 2008).

Wash.—*Sather v. City of Spokane*, 157 Wash. App. 1032, 2010 WL 3120252 (Div. 3 2010).

Minn.—*Sawh v. City of Lino Lakes*, 823 N.W.2d 627 (Minn. 2012).

Minn.—*Sawh v. City of Lino Lakes*, 823 N.W.2d 627 (Minn. 2012).

S.D.—*City of Pierre v. Blackwell*, 2001 SD 127, 635 N.W.2d 581 (S.D. 2001).

Wash.—*Downey v. Pierce County*, 165 Wash. App. 152, 267 P.3d 445 (Div. 2 2011).

Alaska—*Hagblom v. City of Dillingham*, 191 P.3d 991 (Alaska 2008).

Pa.—*Snead v. Society for Prevention of Cruelty to Animals of Pennsylvania*, 2007 PA Super 204, 929 A.2d 1169 (2007), order aff'd, 604 Pa. 166, 985 A.2d 909 (2009).

U.S.—*Professional Dog Breeders Advisory Council, Inc. v. Wolff*, 752 F. Supp. 2d 575 (E.D. Pa. 2010).

U.S.—*Weigel v. Maryland*, 950 F. Supp. 2d 811 (D. Md. 2013), appeal dismissed, (4th Cir. 13-1903) (June 10, 2014).

Kan.—*Hearn v. City of Overland Park*, 244 Kan. 638, 772 P.2d 758, 80 A.L.R.4th 51 (1989).

Rational basis

Ohio—*Toledo v. Tellings*, 114 Ohio St. 3d 278, 2007-Ohio-3724, 871 N.E.2d 1152 (2007).

A.L.R. Library

Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers", 80 A.L.R.4th 70.

D.C.—*McNeely v. U.S.*, 874 A.2d 371 (D.C. 2005).

Mass.—*American Dog Owners Ass'n, Inc. v. City of Lynn*, 404 Mass. 73, 533 N.E.2d 642 (1989).

16D C.J.S. Constitutional Law § 2398

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

2. Animals

§ 2398. Fence and stock laws

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4312

Statutes establishing stock law, fence, or grazing districts, and prohibiting the herding of sheep on cattle ranges, generally do not deny due process of law.

Due process of law is not denied by rationally based statutes providing for the establishment of stock districts,¹ fence districts,² no-fence districts,³ fencing and herding requirements,⁴ or grazing districts,⁵ stock density restrictions per acre,⁶ and prohibiting the grazing of any stock off the premises of the owner or keeper within the district, without a license.⁷

Due process is not denied by rationally based statutes prohibiting the herding of sheep on cattle ranges,⁸ or providing for the determination as to whether sheep or cattle have the "preferred or better right" to graze on any particular part of the public domain,⁹ or regulating the watering of livestock on a public range.¹⁰

An ordinance prohibiting the erection of a fence in a specified area in order to protect an endangered species of animal does not violate due process when it has a rational basis consistent with state environmental policy.¹¹

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Footnotes

- 1 Ala.—*George v. Chickasaw Land Co.*, 209 Ala. 648, 96 So. 781 (1923).
- 2 Ark.—*Reed v. Hundley*, 208 Ark. 924, 188 S.W.2d 117 (1945).
- 3 Ariz.—*Ricca v. Bojorquez*, 13 Ariz. App. 10, 473 P.2d 812 (Div. 1 1970).
- 4 Cal.—*Herzberg v. County of Plumas*, 133 Cal. App. 4th 1, 34 Cal. Rptr. 3d 588 (3d Dist. 2005).
Utah—*Bastian v. King*, 661 P.2d 953 (Utah 1983).
- 5 Mont.—*Appeal of Two Crow Ranch, Inc.*, 159 Mont. 16, 494 P.2d 915 (1972).
- 6 Idaho—*Idaho Dairymen's Ass'n, Inc. v. Gooding County*, 148 Idaho 653, 227 P.3d 907 (2010).
- 7 Or.—*Mendiola v. Graham*, 139 Or. 592, 10 P.2d 911 (1932).
- 8 U.S.—*Omaechevarria v. State of Idaho*, 246 U.S. 343, 38 S. Ct. 323, 62 L. Ed. 763 (1918).
Ariz.—*Hancock v. State*, 31 Ariz. 389, 254 P. 225 (1927).
- 9 Colo.—*Allen v. Bailey*, 91 Colo. 260, 14 P.2d 1087 (1932).
- 10 Nev.—*In re Calvo*, 50 Nev. 125, 253 P. 671 (1927).
- 11 Fla.—*Department of Community Affairs v. Moorman*, 664 So. 2d 930 (Fla. 1995).

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16D C.J.S. Constitutional Law § 2399

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

2. Animals

§ 2399. Fence and stock laws—Estrays or animals running at large

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4312

Rationally based statutes regulating stock estrays or stock animals running at large do not deny due process of law but must address the owners' protectable property interests consistent with due process.

Procedures for the seizure and disposition of cattle or other livestock as estrays—defined as any animal for which there is insufficient proof of ownership on inspection—must address the owners' protectable property interests but may do so by adequate postdeprivation remedies.¹ State action to round up trespassing cattle required adequate notice and an opportunity to be heard in light of the substantial private property interests at stake and the risk of deprivation.² The state may regulate the running at large of cattle, horses, sheep, and other animals along highways or elsewhere³ and may regulate the relative rights and responsibilities of the proprietors of enclosed land and of the owners of stock going at large or kept in adjacent enclosures,⁴ and of the owners of damaged motor vehicles and the owners of livestock permitted to be on a highway.⁵

Animals running at large in violation of such regulations may be authorized to be destroyed,⁶ or to be taken up and sold to pay the expenses incurred,⁷ provided the owner is given notice prior to such sale or destruction,⁸ but due process is violated by a

seizure, sale, or destruction without giving notice to the owner,⁹ or without strict compliance with other requirements of the ordinance authorizing the sale or destruction.¹⁰

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Footnotes

- 1 U.S.—*Stanko v. Maher*, 419 F.3d 1107 (10th Cir. 2005).
- 2 Haw.—*Freddy Nobriga Enterprises, Inc. v. State, Dept. of Hawaiian Home Lands*, 129 Haw. 123, 295 P.3d 993 (Ct. App. 2013).
- 3 Mo.—*McCrory v. Fisher*, 108 S.W.2d 413 (Mo. Ct. App. 1937).
- 4 Okla.—*Inselman v. Berryman*, 1937 OK 325, 180 Okla. 136, 68 P.2d 527 (1937).
Fencing-out ordinance for open range
Cal.—*Herzberg v. County of Plumas*, 133 Cal. App. 4th 1, 34 Cal. Rptr. 3d 588 (3d Dist. 2005).
Reasonable time to comply with fence law
Utah—*Nowers v. Oakden*, 110 Utah 25, 169 P.2d 108 (1946).
- 5 Ala.—*McPherson v. Gross*, 399 So. 2d 301 (Ala. Civ. App. 1981).
- 6 Ark.—*Ross v. Desha Levee Bd.*, 83 Ark. 176, 103 S.W. 380 (1907).
- 7 Fla.—*Ryals v. Morefield*, 111 Fla. 828, 150 So. 138 (1933).
- 8 Fla.—*Morgan v. City of Lakeland*, 90 Fla. 525, 107 So. 269 (1925).
- 9 Cal.—*Carrera v. Bertaini*, 63 Cal. App. 3d 721, 134 Cal. Rptr. 14 (5th Dist. 1976).
- 10 La.—*Miller v. Doyal*, 9 La. App. 313, 119 So. 477 (1st Cir. 1928).

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16D C.J.S. Constitutional Law § 2400

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

2. Animals

§ 2400. Fishing laws

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4314

The regulation of fishing is subject to a due process rational basis standard, requiring a reasonable relationship to a legitimate government interest.

Fishing, whether commercial or recreational, is not a fundamental right for purposes of due process,¹ and those engaged in fishing activities are not a suspect class for purposes of due process; the applicable standard of review in this context is one for a rational basis as bearing a reasonable relationship to a legitimate government goal.² State regulation of fishing rights must meet appropriate due process standards as rationally based,³ including sufficient notice of prohibited conduct,⁴ without the use of terms so vague that persons of ordinary intelligence must guess at the meaning and differ as to the application.⁵ State action in the regulation of fishing may not occur in an irrational, arbitrary, or conscience-shocking manner as constitutes a violation of substantive due process.⁶

The State may regulate the taking and using of fish, and other similar species, from the waters of the state, without violating due process when the regulations are reasonable and have the proper relation to the purpose intended to be accomplished.⁷

Regulations may limit the taking of certain species of fish;⁸ prohibit or regulate fishing in certain waters, such as fish preserves,⁹ private property,¹⁰ or public property,¹¹ or declare or authorize a limited¹² or closed season for certain varieties of fish.¹³

The State may require a license or permit for certain types of fishing activities,¹⁴ including commercial fishing operations,¹⁵ and license suspension or revocation proceedings must observe procedural safeguards.¹⁶ The denial of a fishing license renewal implicates a protected property interest and requires a postdeprivation hearing.¹⁷ Fishery entry permit applicants are entitled to due process in the adjudication of their claims before a commercial fisheries entry commission.¹⁸ When fishing permit regulations are mandatory in nature, establishing an entitlement to the permit, a property interest is created requiring procedural due process protections for the denial of a permit application.¹⁹

A penalty provision for violating a fishery law, consisting of revocation of one's commercial mullet fishing license for life, is rationally related to the legislature's express purpose of promoting the enhancement of the state's mullet fishery and thus not a violation of due process.²⁰ When a state has probable cause to believe that a boat has been used in a fishing violation, an ex parte seizure of the boat without prior notice or an adversarial hearing does not violate the due process clause of the state's constitution.²¹

Regulations may prohibit fishing with certain instrumentalities, such as nets, traps, and seines,²² and, for enforcement purposes, prohibit the possession of such instrumentalities, regardless of the time of the acquisition or the intention of the possessor.²³

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Footnotes

- 1 U.S.—*Sisk v. Texas Parks and Wildlife Dept.*, 644 F.2d 1056 (5th Cir. 1981); *Vickers v. Egbert*, 359 F. Supp. 2d 1358 (S.D. Fla. 2005).
- 2 R.I.—*Riley v. Rhode Island Dept. of Environmental Management*, 941 A.2d 198 (R.I. 2008).
- 3 U.S.—*Vickers v. Egbert*, 359 F. Supp. 2d 1358 (S.D. Fla. 2005).
- U.S.—*Northwest Steelheaders Council of Trout Unlimited v. U.S.*, 423 U.S. 1086, 96 S. Ct. 877, 47 L. Ed. 2d 97 (1976); *Rich v. LaPointe*, 484 Fed. Appx. 572 (1st Cir. 2012); *Vandever v. Lloyd*, 644 F.3d 957 (9th Cir. 2011); *U.S. v. Approximately 64,695 Pounds of Shark Fins*, 520 F.3d 976 (9th Cir. 2008); *Frank Sloup and Crabs Unlimited, LLC v. Loeffler*, 745 F. Supp. 2d 115 (E.D. N.Y. 2010).
- Gear permit**
- Alaska—*Miner's Estate v. Commercial Fisheries Entry Commission*, 635 P.2d 827 (Alaska 1981).
- A.L.R. Library**
- Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents, 31 A.L.R.6th 523 (§§ 7, 8, 19, 27, 28, 38, 46, Due process).
- Validity, construction, and effect of statutes or regulations making possession of fish or game, or of specified hunting or fishing equipment, prima facie evidence of violation, 81 A.L.R.2d 1093.
- 4 Wash.—*State v. Stritmatter*, 25 Wash. App. 76, 604 P.2d 1023 (Div. 2 1979).
- 5 Alaska—*State v. Martushev*, 846 P.2d 144 (Alaska Ct. App. 1993).
- Statutory and regulatory notice sufficient**
- Alaska—*State v. Dupier*, 118 P.3d 1039 (Alaska 2005).
- Fishing vessel definition as vague**
- U.S.—*U.S. v. Approximately 64,695 Pounds of Shark Fins*, 520 F.3d 976 (9th Cir. 2008).
- 6 U.S.—*Frank Sloup and Crabs Unlimited, LLC v. Loeffler*, 745 F. Supp. 2d 115 (E.D. N.Y. 2010).
- 7 U.S.—*Medeiros v. Vincent*, 431 F.3d 25 (1st Cir. 2005); *Vandever v. Lloyd*, 644 F.3d 957 (9th Cir. 2011).
- Ariz.—*Wallace v. Shields*, 175 Ariz. 166, 854 P.2d 1152 (Ct. App. Div. 1 1992).
- Mich.—*Michigan United Conservation Clubs v. Board of Trustees of Michigan State University*, 172 Mich. App. 189, 431 N.W.2d 217, 50 Ed. Law Rep. 161 (1988).

Endangered Species Act

U.S.—[Delbay Pharmaceuticals, Inc. v. Department of Commerce](#), 409 F. Supp. 637 (D.D.C. 1976).

Marine mammals importation prohibition

U.S.—[Globe Fur Dyeing Corp. v. U.S.](#), 467 F. Supp. 177 (D.D.C. 1978), [aff'd](#), 612 F.2d 586 (D.C. Cir. 1980).

Me.—[State v. Sherburne](#), 571 A.2d 1181, 87 A.L.R.4th 965 (Me. 1990).

Lobster restrictions

U.S.—[Medeiros v. Vincent](#), 431 F.3d 25 (1st Cir. 2005).

Crab restrictions

U.S.—[Vickers v. Egbert](#), 359 F. Supp. 2d 1358 (S.D. Fla. 2005).

Harvesting shellfish

Me.—[State v. Eaton](#), 577 A.2d 1162 (Me. 1990).

R.I.—[Cherenzia v. Lynch](#), 847 A.2d 818 (R.I. 2004).

Frog gigging prohibition unconstitutional

La.—[City of Shreveport v. Curry](#), 357 So. 2d 1078 (La. 1978).

Forfeiture of catch

Cal.—[People v. Porpora](#), 91 Cal. App. 3d Supp. 13, 154 Cal. Rptr. 400 (App. Dep't Super. Ct. 1979).

Ill.—[People v. Walton](#), 314 Ill. 45, 145 N.E. 182 (1924).

Wash.—[McMillan v. Sims](#), 132 Wash. 265, 231 P. 943 (1925).

Regulating sale

Mich.—[People v. Zimberg](#), 321 Mich. 655, 33 N.W.2d 104 (1948).

Ga.—[Maddox v. State](#), 252 Ga. 198, 312 S.E.2d 325 (1984).

Mich.—[Michigan United Conservation Clubs v. Board of Trustees of Michigan State University](#), 172 Mich. App. 189, 431 N.W.2d 217, 50 Ed. Law Rep. 161 (1988).

Alaska—[State v. Martushev](#), 846 P.2d 144 (Alaska Ct. App. 1993).

Me.—[McKenney v. Farnsworth](#), 121 Me. 450, 118 A. 237 (1922).

Wash.—[Vail v. Seaborg](#), 120 Wash. 126, 207 P. 15 (1922).

Digging clams

Wash.—[Wiegardt v. Brennan](#), 192 Wash. 529, 73 P.2d 1330 (1937).

Commercial salmon fishing

Cal.—[Salmon Trollers Marketing Assn. v. Fullerton](#), 124 Cal. App. 3d 291, 177 Cal. Rptr. 362 (1st Dist. 1981).

U.S.—[Rich v. LaPointe](#), 484 Fed. Appx. 572 (1st Cir. 2012).

La.—[State v. Weaver](#), 805 So. 2d 166 (La. 2002).

Residency requirement

Mont.—[Monroe v. State](#), 265 Mont. 1, 873 P.2d 230 (1994).

U.S.—[Vandevere v. Lloyd](#), 644 F.3d 957 (9th Cir. 2011).

Alaska—[May v. State](#), Commercial Fisheries Entry Com'n, 168 P.3d 873 (Alaska 2007).

Minn.—[Mertins v. Commissioner of Natural Resources](#), 755 N.W.2d 329 (Minn. Ct. App. 2008).

R.I.—[Riley v. Rhode Island Dept. of Environmental Management](#), 941 A.2d 198 (R.I. 2008).

U.S.—[Rich v. LaPointe](#), 484 Fed. Appx. 572 (1st Cir. 2012).

License seizure proceedings

Minn.—[Mertins v. Commissioner of Natural Resources](#), 755 N.W.2d 329 (Minn. Ct. App. 2008).

U.S.—[Graffam v. Town of Harpswell](#), 250 F. Supp. 2d 1 (D. Me. 2003).

Wash.—[Johnson v. Washington Dept. of Fish and Wildlife](#), 175 Wash. App. 765, 305 P.3d 1130 (Div. 2 2013), review denied, 179 Wash. 2d 1006, 315 P.3d 530 (2013).

Alaska—[Leuthe v. State](#), Commercial Fisheries Entry Com'n, 20 P.3d 547 (Alaska 2001).

U.S.—[Foss v. National Marine Fisheries Service](#), 161 F.3d 584 (9th Cir. 1998).

La.—[State v. Weaver](#), 805 So. 2d 166 (La. 2002).

Alaska—[Waiste v. State](#), 10 P.3d 1141 (Alaska 2000).

Fla.—[Lane v. Chiles](#), 698 So. 2d 260 (Fla. 1997).

Lobster nontrap restrictions

U.S.—[Medeiros v. Vincent](#), 431 F.3d 25 (1st Cir. 2005).

SCUBA equipment barred

R.I.—[Cherenzia v. Lynch](#), 847 A.2d 818 (R.I. 2004).

Trotlines

23

Tex.—[Stockton v. Parks and Wild Life Commission](#), 571 S.W.2d 338 (Tex. Civ. App. Austin 1978).
U.S.—[Miller v. McLaughlin](#), 281 U.S. 261, 50 S. Ct. 296, 74 L. Ed. 840 (1930).

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16D C.J.S. Constitutional Law § 2401

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

2. Animals

§ 2401. Hunting and game laws

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4313

The regulation of hunting and wild game is subject to a due process rational basis standard, requiring a reasonable relationship to a legitimate government interest.

Statutory provisions for the protection of wild game, which prescribe reasonable or necessary regulations of the right to take and use such game are, generally, not a taking of property without due process of law.¹ This is also true of a regulation which prohibits the possession of game out of season although it may have been taken in foreign countries during the open season.²

Due process does not require notice and a hearing before the suspension of a hunting license, provided postdeprivation safeguards are afforded,³ and the revocation of a hunting license, based on a finding of guilt of a code violation, is not a denial of due process.⁴

A statute governing the disposition of wildlife seized by a state department of natural resources comports with due process when it grants a complaining party 30 days within which to file a civil action for the return of the wildlife or the proceeds from the sale of the wildlife.⁵

Hunting from motor vehicles or with multiple dogs may be prohibited without violating due process rights.⁶ Airborne hunting may be prohibited under reasonably definite provisions against the harassment of animals.⁷

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Footnotes

- 1 Ga.—[Price v. State](#), 253 Ga. 250, 319 S.E.2d 849 (1984).
Pa.—[Pennsylvania Game Com'n v. Marich](#), 542 Pa. 226, 666 A.2d 253 (1995).
Ban on fee-hunting of private game
U.S.—[Kafka v. Hagener](#), 176 F. Supp. 2d 1037 (D. Mont. 2001).
Ban on shooting migratory birds
U.S.—[Johnson v. U.S. Dept. of Interior](#), 185 F. Supp. 2d 713 (W.D. Ky. 2001).
Protected birds
U.S.—[Andrus v. Allard](#), 444 U.S. 51, 100 S. Ct. 318, 62 L. Ed. 2d 210 (1979).
Goose hunting
Colo.—[Collopy v. Wildlife Commission](#), Dept. of Natural Resources, 625 P.2d 994 (Colo. 1981).
A.L.R. Library
[Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents](#), 31 A.L.R.6th 523 (§§ 7, 8, 19, 27, 28, 38, 46, Due process).
[Validity, construction, and effect of statutes or regulations making possession of fish or game, or of specified hunting or fishing equipment, prima facie evidence of violation](#), 81 A.L.R.2d 1093.
- 2 U.S.—[People of State of New York ex rel. Silz v. Hesterberg](#), 211 U.S. 31, 29 S. Ct. 10, 53 L. Ed. 75 (1908).
- 3 N.D.—[Gray v. North Dakota Game and Fish Dept.](#), 2005 ND 204, 706 N.W.2d 614 (N.D. 2005).
- 4 Ill.—[Russell v. Department of Natural Resources](#), 183 Ill. 2d 434, 233 Ill. Dec. 782, 701 N.E.2d 1056 (1998).
- 5 Ga.—[Blackston v. State Dept. of Natural Resources](#), 255 Ga. 15, 334 S.E.2d 679 (1985).
- 6 Mo.—[Turner v. Missouri Dept. of Conservation](#), 349 S.W.3d 434 (Mo. Ct. App. S.D. 2011).
- 7 U.S.—[U.S. v. Red Frame Parasail](#), [Buckeye Model Eagle 503](#) (serial number 4159), 160 F. Supp. 2d 1048, 179 A.L.R. Fed. 769 (D. Ariz. 2001).

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16D C.J.S. Constitutional Law § 2402

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

3. Public Facilities and Services

§ 2402. General standards and principles

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [4100](#), [4101](#), [4109](#) to [4111](#)

The regulation of the use of public facilities and services must comply with due process under the standard of a rational basis as reasonably related to a legitimate governmental interest.

The right to access and use public facilities is a constitutionally protected liberty interest for due process purposes.¹ In contrast, establishing a due process protected property interest in a government service requires showing a legitimate claim of entitlement to that service, beyond a mere abstract need, desire, or unilateral expectation.² There is no affirmative duty under due process to provide services to the general public³ or to individuals, absent custody.⁴

For due process purposes, there is no fundamental right to public services,⁵ nor is there a fundamental right to access and use public facilities.⁶

The right to access and use public facilities is subject to a due process standard of protection for a rational basis, requiring a rational relationship to a legitimate governmental interest.⁷ It does not implicate the due process right to intrastate travel, since

the right to travel has no bearing on access to a particular place.⁸ Standards governing access to or conduct in public facilities are subject to a due process vagueness analysis but need only meet a standard that the meaning would be understood by a person of reasonable intelligence⁹ and that it must not be arbitrary and capricious.¹⁰

When the regulation of public facilities and services amounts to a deprivation of a protected interest, due process safeguards are required,¹¹ as may require timely notice and an opportunity for a hearing,¹² but procedural safeguards are not required when the claimed interest is de minimis.¹³

Various rules, regulations, and ordinances, which restrict or forbid particular uses of certain public facilities and services, are permissible within due process constraints, including those applicable to such public facilities as office buildings,¹⁴ capitol buildings,¹⁵ community centers,¹⁶ court proceedings,¹⁷ libraries,¹⁸ walkways,¹⁹ lakes,²⁰ beaches,²¹ parks,²² pools,²³ recreational facilities,²⁴ concerts,²⁵ harbors,²⁶ public shelters or homeless shelters,²⁷ day care centers,²⁸ and stadiums.²⁹

CUMULATIVE SUPPLEMENT

Cases:

Assemblages clause of statute, which made it unlawful "to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds," was not impermissibly vague, in violation of due process, absent any claim that statute was vague with respect to coverage of college student's conduct in being arrested after displaying political sign on Supreme Court plaza grounds, or additional expressive acts he intended to carry out in plaza in future. [U.S.C.A. Const.Amend. 5](#); [40 U.S.C.A. § 6135](#). [Hodge v. Talkin](#), 799 F.3d 1145 (D.C. Cir. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S.—Kennedy v. City Of Cincinnati](#), 595 F.3d 327 (6th Cir. 2010); [Catron v. City of St. Petersburg](#), 658 F.3d 1260 (11th Cir. 2011).
[Haw.—Minton v. Quintal](#), 131 Haw. 167, 317 P.3d 1 (2013), as corrected on other grounds, (Dec. 27, 2013).
[Tex.—Anthony v. State](#), 209 S.W.3d 296 (Tex. App. Texarkana 2006).
Not right of abutting owner
The state's exercise or assertion of its property rights on state property does not implicate the procedural due process rights of an abutting property owner.
[U.S.—Hornbeak-Denton v. Myers](#), 361 Fed. Appx. 684 (6th Cir. 2010).
- 2 [U.S.—Midkiff v. Adams County Regional Water District](#), 409 F.3d 758, 2005 FED App. 0226P (6th Cir. 2005).
- 3 [U.S.—Ocean v. Kearney](#), 123 F. Supp. 2d 618 (S.D. Fla. 2000).
[Del.—Morgan v. Powell](#), 659 A.2d 1243 (Del. Fam. Ct. 1994).
No right to city services
[U.S.—Pheasant Run Condominium Homes Ass'n v. City of Brookfield](#), 580 F. Supp. 2d 735 (E.D. Wis. 2008); [Baugh v. City of Milwaukee](#), 823 F. Supp. 1452 (E.D. Wis. 1993), judgment aff'd, 41 F.3d 1510 (7th Cir. 1994).
No right to nonemergency police services
[U.S.—Klimik v. Kent County Sheriff's Department](#), 91 Fed. Appx. 396 (6th Cir. 2004).
No right to emergency medical services
[U.S.—Wright v. District of Columbia](#), 799 F. Supp. 2d 1 (D.D.C. 2011).

No right to rescue services

U.S.—*Hottenstein v. City of Sea Isle City*, 977 F. Supp. 2d 353 (D.N.J. 2013).

No duty to provide fire services

U.S.—*Bush v. City of Utica*, 948 F. Supp. 2d 246 (N.D. N.Y. 2013), *aff'd*, 558 Fed. Appx. 131 (2d Cir. 2014).

No right to basic public service

Ill.—*Henderson v. Bradford*, 168 Ill. App. 3d 777, 119 Ill. Dec. 596, 523 N.E.2d 64 (1st Dist. 1988).

U.S.—*DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989); *Association For Retarded Citizens of Texas v. Kavanagh*, 483 U.S. 1057, 108 S. Ct. 44, 97 L. Ed. 2d 821 (1987); *Jackson v. Schultz*, 429 F.3d 586, 2005 FED App. 0448P (6th Cir. 2005); *Thornton v. City of Pittsburgh*, 777 F. Supp. 2d 946 (W.D. Pa. 2011).

Mass.—*Williams v. Secretary of Executive Office of Human Services*, 414 Mass. 551, 609 N.E.2d 447, 1 A.D.D. 949 (1993).

U.S.—*Pheasant Run Condominium Homes Ass'n v. City of Brookfield*, 580 F. Supp. 2d 735 (E.D. Wis. 2008).

U.S.—*Neinast v. Board of Trustees of Columbus Metropolitan Library*, 346 F.3d 585, 2003 FED App. 0363P (6th Cir. 2003); *Brown v. City of Michigan City, Indiana*, 462 F.3d 720 (7th Cir. 2006).

Tex.—*Anthony v. State*, 209 S.W.3d 296 (Tex. App. Texarkana 2006).

U.S.—*Neinast v. Board of Trustees of Columbus Metropolitan Library*, 346 F.3d 585, 2003 FED App. 0363P (6th Cir. 2003); *Brown v. City of Michigan City, Indiana*, 462 F.3d 720 (7th Cir. 2006).

N.C.—*Standley v. Town of Woodfin*, 186 N.C. App. 134, 650 S.E.2d 618 (2007), *decision aff'd*, 362 N.C. 328, 661 S.E.2d 728 (2008).

Tex.—*Anthony v. State*, 209 S.W.3d 296 (Tex. App. Texarkana 2006).

U.S.—*Williams v. Town of Greenburgh*, 535 F.3d 71 (2d Cir. 2008); *Hannemann v. Southern Door County School Dist.*, 673 F.3d 746, 278 Ed. Law Rep. 70 (7th Cir. 2012).

U.S.—*Milestone v. City of Monroe, Wis.*, 665 F.3d 774 (7th Cir. 2011); *Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011).

N.Y.—*Dua v. New York City Dept. of Parks and Recreation*, 84 A.D.3d 596, 924 N.Y.S.2d 47 (1st Dep't 2011).

Library access restriction as vague

U.S.—*Armstrong v. District of Columbia Public Library*, 154 F. Supp. 2d 67 (D.D.C. 2001).

Boardwalk vending ordinance facially void

U.S.—*Hunt v. City of Los Angeles*, 638 F.3d 703 (9th Cir. 2011).

U.S.—*Milestone v. City of Monroe, Wis.*, 665 F.3d 774 (7th Cir. 2011); *Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011).

U.S.—*Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011).

U.S.—*Datri v. Incorporated Village of Bellport*, 307 Fed. Appx. 465 (2d Cir. 2008); *Neinast v. Board of Trustees of Columbus Metropolitan Library*, 346 F.3d 585, 2003 FED App. 0363P (6th Cir. 2003); *Royer ex rel. Estate of Royer v. City of Oak Grove*, 374 F.3d 685 (8th Cir. 2004).

U.S.—*Kennedy v. City Of Cincinnati*, 595 F.3d 327 (6th Cir. 2010).

U.S.—*Hannemann v. Southern Door County School Dist.*, 673 F.3d 746, 278 Ed. Law Rep. 70 (7th Cir. 2012).

U.S.—*Copsey v. Swearingen*, 36 F.3d 1336 (5th Cir. 1994).

U.S.—*Williams v. Town of Greenburgh*, 535 F.3d 71 (2d Cir. 2008).

Ohio—*In re A.G.*, 139 Ohio St. 3d 572, 2014-Ohio-2597, 13 N.E.3d 1146 (2014).

U.S.—*Hill v. Derrick*, 240 Fed. Appx. 935 (3d Cir. 2007).

Limited access to county law library

Iowa—*Security State Bank v. Taylor*, 421 N.W.2d 877 (Iowa 1988).

U.S.—*John v. City of San Antonio*, 336 Fed. Appx. 411 (5th Cir. 2009).

U.S.—*National Ass'n of Property Owners v. U. S.*, 499 F. Supp. 1223 (D. Minn. 1980), *judgment aff'd*, 660 F.2d 1240 (8th Cir. 1981).

Wis.—*State v. Village of Lake Delton*, 93 Wis. 2d 78, 286 N.W.2d 622 (Ct. App. 1979).

U.S.—*Magee v. City of South Padre Island*, 463 Fed. Appx. 377 (5th Cir. 2012).

U.S.—*Brown v. City of Michigan City, Indiana*, 462 F.3d 720 (7th Cir. 2006); *Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011).

N.Y.—*Dua v. New York City Dept. of Parks and Recreation*, 84 A.D.3d 596, 924 N.Y.S.2d 47 (1st Dep't 2011).

National Forest System land

U.S.—*U.S. v. Kalb*, 234 F.3d 827 (3d Cir. 2000).

Ban of convicted sex offender

U.S.—*Doe v. City of Lafayette, Ind.*, 377 F.3d 757, 40 A.L.R.6th 777 (7th Cir. 2004).

N.C.—*Standley v. Town of Woodfin*, 186 N.C. App. 134, 650 S.E.2d 618 (2007), decision aff'd, 362 N.C. 328, 661 S.E.2d 728 (2008).

23 U.S.—*Kennedy v. City Of Cincinnati*, 595 F.3d 327 (6th Cir. 2010).

24 U.S.—*Datri v. Incorporated Village of Bellport*, 307 Fed. Appx. 465 (2d Cir. 2008).

25 U.S.—*Willis v. Town Of Marshall, N.C.*, 426 F.3d 251 (4th Cir. 2005).

26 U.S.—*Indiana Port Commission v. Bethlehem Steel Corp.*, 534 F. Supp. 858 (N.D. Ind. 1981), judgment rev'd on other grounds, 702 F.2d 107 (7th Cir. 1983).

27 U.S.—*Boykin v. Gray*, 895 F. Supp. 2d 199 (D.D.C. 2012).

D.C.—*Baltimore v. District of Columbia*, 10 A.3d 1141 (D.C. 2011).

28 U.S.—*Schneider v. Whaley*, 417 F. Supp. 750 (S.D. N.Y. 1976), judgment modified on other grounds, 541 F.2d 916 (2d Cir. 1976), adhered to, 548 F.2d 394 (2d Cir. 1976).

29 U.S.—*Murdock v. City of Jacksonville, Fla.*, 361 F. Supp. 1083 (M.D. Fla. 1973).

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16D C.J.S. Constitutional Law § 2403

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

3. Public Facilities and Services

§ 2403. Streets and highways

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4105(1) to 4105(5)

Reasonable regulations with respect to the use of streets and highways do not deny due process of law, as measured by the standard of a rational basis in relation to legitimate state interests, absent arbitrary action.

While access rights to public streets are protected property interests within the scope of the Due Process Clause,¹ and travel on public streets is a protected liberty interest within the scope of the Due Process Clause,² the government may regulate the use of streets and other highways, or even prohibit their use, in the interest of public safety and convenience, or for the protection of the highway, without violating the requirement of due process, provided the regulation or prohibition is reasonable and has some tendency to accomplish the object in view.³ Rationally based regulations may include those pertaining to the abandonment or vacation of a road,⁴ the closing of a street or highway,⁵ the acceptance or rejection of a proposed highway,⁶ the establishment of road or highway rights of way⁷ and easements,⁸ advertising,⁹ the placement of underground lines,¹⁰ the operation of motor vehicles,¹¹ the operation of motorcycles,¹² the operation of bicycles,¹³ the movement of objects or structures on a public roadway,¹⁴ parking on a public roadway,¹⁵ and the size and weight of vehicles and loads.¹⁶

Regulations not rationally founded violate substantive due process rights and are not enforceable as when a county's interference with an abutting property owner's easement of access to a street is predicated on its claim of ownership in a park that does not exist.¹⁷ Arbitrary and unreasonable acts¹⁸ or regulations are void.¹⁹

Property interests of abutting property owners are protectable interests under due process, such as a right to ingress and egress in relation to a public street, of which the owner cannot be deprived without due process.²⁰

Automated traffic enforcement

The use of automatic traffic law enforcement mechanisms on public streets, such as "red light camera" systems, are generally consistent with sufficient due process as rationally based provisions, when supported by adequate procedural safeguards,²¹ and when not unconstitutionally vague,²² or arbitrary or capricious.²³ Due process standards are met when the provision incorporates particularized requirements by which a defendant is to be informed of the time, place, and nature of the violation and of the means by which the enforcement action can be contested.²⁴

CUMULATIVE SUPPLEMENT

Cases:

Private interest at stake, i.e., a \$100 fine, was relatively small, as factor for determining what process was due, in procedural due process challenge to village's red light camera program. *U.S. Const. Amend. 14. Knutson v. Village of Lakemoor*, 932 F.3d 572 (7th Cir. 2019).

Drivers did not state plausible claim that city's enforcement of traffic laws through its traffic camera system violated drivers' procedural due process rights, absent factual allegations supporting claim that city's administrative process for challenging traffic citations issued was a rubber stamp or sham of a process. *U.S. Const. Amend. 14. Hughes v. City of Cedar Rapids, Iowa*, 840 F.3d 987 (8th Cir. 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 Fla.—*Johnson's Services, Inc. v. Pinellas County*, 863 So. 2d 470 (Fla. 2d DCA 2004).
- 2 N.C.—*State v. Sullivan*, 201 N.C. App. 540, 687 S.E.2d 504 (2009).
- 3 U.S.—*Railway Exp. Agency v. People of State of N.Y.*, 336 U.S. 106, 69 S. Ct. 463, 93 L. Ed. 533 (1949); *Idris v. City of Chicago, Ill.*, 552 F.3d 564 (7th Cir. 2009).
- 4 U.S.—*Craig v. Grant Parish Police Jury*, 593 F. Supp. 2d 901 (W.D. La. 2008); *Baumgardner v. Town of Ruston*, 712 F. Supp. 2d 1180 (W.D. Wash. 2010).
Mich.—*Ambs v. Kalamazoo County Road Com'n*, 255 Mich. App. 637, 662 N.W.2d 424 (2003).
Bias from conflicting decision-maker roles
Kan.—*Davenport Pastures, LP v. Morris County Bd. of County Com'rs*, 291 Kan. 132, 238 P.3d 731 (2010).
- 5 U.S.—*Enclave Arlington Associates Ltd. Partnership v. City of Arlington, Tex.*, 669 F. Supp. 2d 735 (N.D. Tex. 2009), judgment aff'd, 401 Fed. Appx. 936 (5th Cir. 2010).
Reclassification as trail
U.S.—*Rhodes v. Town of Georgia*, 2008 WL 5082723 (D. Vt. 2008).
Street barricades blocking access

U.S.—*Warren v. City of Athens, Ohio*, 411 F.3d 697, 2005 FED App. 0261P (6th Cir. 2005).

Closing access to public street

Tex.—*City of San Antonio v. TPLP Office Park Properties*, 218 S.W.3d 60 (Tex. 2007).

U.S.—*Sullivan v. Town of Salem*, 805 F.2d 81 (2d Cir. 1986).

Determining public or private ownership of road

U.S.—*Pheasant Run Condominium Homes Ass'n v. City of Brookfield*, 580 F. Supp. 2d 735 (E.D. Wis. 2008).

U.S.—*Ferran v. Town of Nassau*, 471 F.3d 363 (2d Cir. 2006).

Idaho—*Halvorson v. North Latah County Highway Dist.*, 151 Idaho 196, 254 P.3d 497 (2011).

Ill.—*Davis v. Brown*, 221 Ill. 2d 435, 303 Ill. Dec. 773, 851 N.E.2d 1198 (2006).

Acquisition process

Idaho—*Ada County Highway Dist. v. Total Success Investments, LLC*, 145 Idaho 360, 179 P.3d 323 (2008).

Idaho—*Halvorson v. North Latah County Highway Dist.*, 151 Idaho 196, 254 P.3d 497 (2011).

U.S.—*Carpenter Outdoor Advertising Co. v. City of Fenton*, 251 F.3d 686 (8th Cir. 2001).

Fla.—*CBS Outdoor Inc. v. Florida Dept. of Transp.*, 124 So. 3d 383 (Fla. 1st DCA 2013).

Ga.—*City of Columbus v. Georgia Dept. of Transp.*, 292 Ga. 878, 742 S.E.2d 728 (2013).

Pa.—*Adams Outdoor Advertising, Ltd. v. Dept. of Transp.*, 860 A.2d 600 (Pa. Commw. Ct. 2004).

N.D.—*Grand Forks-Traill Water Users, Inc. v. Hjelle*, 413 N.W.2d 344 (N.D. 1987).

U.S.—*Reitz v. Mealey*, 314 U.S. 33, 62 S. Ct. 24, 86 L. Ed. 21 (1941) (overruled in part on other grounds by, *Perez v. Campbell*, 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971)).

Traffic regulations

U.S.—*Schroder v. City of Fort Thomas*, 412 F.3d 724, 2005 FED App. 0285P (6th Cir. 2005); *Mills v. City of Grand Forks*, 614 F.3d 495 (8th Cir. 2010).

D.C.—*Agomo v. Fenty*, 916 A.2d 181, 26 A.L.R.6th 767 (D.C. 2007).

Destruction of abandoned vehicle

Ill.—*Valdez v. City of Ottawa*, 105 Ill. App. 3d 972, 61 Ill. Dec. 595, 434 N.E.2d 1192, 32 A.L.R.4th 718 (3d Dist. 1982).

U.S.—*ABATE of Georgia, Inc. v. Georgia*, 264 F.3d 1315 (11th Cir. 2001); *Simon v. Sargent*, 346 F. Supp. 277 (D. Mass. 1972), judgment aff'd, 409 U.S. 1020, 93 S. Ct. 463, 34 L. Ed. 2d 312 (1972).

U.S.—*Five Borough Bicycle Club v. City of New York*, 483 F. Supp. 2d 351 (S.D. N.Y. 2007), judgment aff'd, 308 Fed. Appx. 511 (2d Cir. 2009).

U.S.—*Donovan v. City of Haverhill*, 311 F.3d 74 (1st Cir. 2002).

Exceeding width of right-of-way

U.S.—*Sofarelli v. Pinellas County*, 931 F.2d 718 (11th Cir. 1991).

U.S.—*City of Los Angeles v. David*, 538 U.S. 715, 123 S. Ct. 1895, 155 L. Ed. 2d 946 (2003); *Lone Star Sec. & Video, Inc. v. City of Los Angeles*, 584 F.3d 1232 (9th Cir. 2009).

Colo.—*Town of Dillon v. Yacht Club Condominiums Home Owners Association*, 2014 CO 37, 325 P.3d 1032 (Colo. 2014).

Mass.—*Gillespie v. City of Northampton*, 460 Mass. 148, 950 N.E.2d 377 (2011).

Owner's vicarious liability for violations

U.S.—*Avis Rent a Car System, Inc. v. City of Chicago*, 439 U.S. 929, 99 S. Ct. 315, 58 L. Ed. 2d 322 (1978).

A.L.R. Library

Regulation and licensing of privately owned parking places, 29 A.L.R.2d 856.

U.S.—*South Carolina State Highway Department v. Barnwell Bros.*, 303 U.S. 177, 58 S. Ct. 510, 82 L. Ed. 734 (1938).

La.—*Boudreaux v. Larpenier*, 110 So. 3d 159 (La. Ct. App. 1st Cir. 2012).

S.D.—*State v. Krahwinkel*, 2002 SD 160, 656 N.W.2d 451 (S.D. 2002).

U.S.—*Simi Inv. Co., Inc. v. Harris County, Tex.*, 236 F.3d 240 (5th Cir. 2000).

N.Y.—*Ken Mar Development, Inc. v. Department of Public Works of City of Saratoga Springs*, 53 A.D.3d 1020, 862 N.Y.S.2d 202 (3d Dep't 2008).

U.S.—*Simi Inv. Co., Inc. v. Harris County, Tex.*, 236 F.3d 240 (5th Cir. 2000).

Neb.—*Buck's, Inc. v. City of Omaha*, 22 Neb. App. 541, 857 N.W.2d 580 (2014).

Or.—*Foster Group, Inc. v. City of Elgin*, 264 Or. App. 424, 332 P.3d 354 (2014).

No property interest in commercial access to highway

- 21 S.D.—*Morris Family, LLC ex rel. Morris v. South Dakota Dept. of Transp.*, 2014 SD 97, 857 N.W.2d 865 (S.D. 2014).
- U.S.—*Mendenhall v. City of Akron*, 374 Fed. Appx. 598 (6th Cir. 2010); *Idris v. City of Chicago, Ill.*, 552 F.3d 564 (7th Cir. 2009).
- Cal.—*People v. Gray*, 58 Cal. 4th 901, 168 Cal. Rptr. 3d 710, 319 P.3d 988 (2014).
- D.C.—*DeVita v. District of Columbia*, 74 A.3d 714 (D.C. 2013), cert. denied, 135 S. Ct. 728, 190 L. Ed. 2d 443 (2014).
- Ill.—*Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008, 359 Ill. Dec. 920, 967 N.E.2d 950 (App. Ct. 1st Dist. 2012).
- Iowa—*City of Sioux City v. Jacobsma*, 2015 WL 711071 (Iowa 2015).
- N.Y.—*County of Suffolk v. Caldane*, 45 Misc. 3d 1, 992 N.Y.S.2d 841 (App. Term 2014).
- Criminal standards inapplicable to civil enforcement**
- Ohio—*Cleveland v. Posner*, 193 Ohio App. 3d 211, 2011-Ohio-1370, 951 N.E.2d 476 (8th Dist. Cuyahoga County 2011).
- A.L.R. Library**
- Automated Traffic Enforcement Systems*, 26 A.L.R.6th 179 (§§ 4 to 7, Violation of right to due process).
- 22 La.—*Morales v. Parish of Jefferson*, 140 So. 3d 375 (La. Ct. App. 5th Cir. 2014), writ denied, 151 So. 3d 582 (La. 2014) and writ denied, 151 So. 3d 582 (La. 2014) and writ denied, 151 So. 3d 583 (La. 2014).
- Mo.—*Unverferth v. City of Florissant*, 419 S.W.3d 76 (Mo. Ct. App. E.D. 2013), reh'g and/or transfer denied, (Oct. 22, 2013) and transfer denied, (Feb. 25, 2014).
- 23 Ill.—*Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008, 359 Ill. Dec. 920, 967 N.E.2d 950 (App. Ct. 1st Dist. 2012).
- 24 N.Y.—*County of Suffolk v. Caldane*, 45 Misc. 3d 1, 992 N.Y.S.2d 841 (App. Term 2014).

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16D C.J.S. Constitutional Law § 2404

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

3. Public Facilities and Services

§ 2404. Mail or postal services

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4110

Regulations or other actions taken which might impair the free access to the postal service must comply with due process requirements when protected interests are affected.

Statutes, regulations, or other actions taken which might impair the free access to the postal service generally must comply with due process requirements¹ and may not be impermissibly vague, as by relying on terms that require wholly subjective judgments without statutory definitions, narrowing context, or settled meanings.² However, the due process protection does not extend to a postal patron's unilateral expectation as opposed to a legally cognizable property right.³ For example, a postal customer does not have a protectable property interest in the rental of a post office box for purposes of due process.⁴

The postal authorities may take some actions without a hearing and without denying the due process rights of postal patrons,⁵ but a postal service patron should be given an opportunity for a hearing when official action results in deprivation of a property right.⁶ The hearing should be conducted fairly⁷ and before an impartial official or tribunal.⁸

Administrative procedures whereby dealers in erotic and sexually provocative literature are ordered not to mail the material to persons who deem it objectionable do not violate due process.⁹ Statutes may authorize the postal service to order the stopping of incoming mail of a person found to have been engaged in conducting a scheme for obtaining money by false representation.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Postal Regulatory Commission's determination that its cost-attribution methodology for setting rates for competitive products, which only excluded common costs without reliability identified causal relationship to specific product, satisfied Postal Accountability and Enhancement Act's requirement that it include "indirect postal costs" was reasonable, and thus was entitled to *Chevron* deference, despite parcel delivery company's contentions that term included only those costs that were shared across products, and that no indirect costs would be attributed under Commission's cost-attribution scheme, where methodology did not exclude all common costs, and was consistent with Commission's prior practice. 39 U.S.C.A. § 3631(b); 48 C.F.R. § 9904.418-30(a)(3). *United Parcel Service, Inc. v. Postal Regulatory Commission*, 890 F.3d 1053 (D.C. Cir. 2018).

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Footnotes

- 1 U.S.—*Contemporary Mission, Inc. v. U.S. Postal Service*, 648 F.2d 97 (2d Cir. 1981); *Reese Bros., Inc. v. U.S. Postal Service*, 905 F. Supp. 2d 223 (D.D.C. 2012).
- 2 U.S.—*Reese Bros., Inc. v. U.S. Postal Service*, 905 F. Supp. 2d 223 (D.D.C. 2012).
- 3 U.S.—*Conservative Caucus, Inc. v. U. S.*, 228 Ct. Cl. 45, 650 F.2d 1206 (1981).
- 4 U.S.—*Moore v. U.S. Postal Service*, 159 Fed. Appx. 265 (2d Cir. 2005).
- 5 U.S.—*Moore v. U.S. Postal Service*, 159 Fed. Appx. 265 (2d Cir. 2005).
Delivery regulations
U.S.—*Parsons v. U.S. Postal Service*, 380 F. Supp. 815 (D.N.J. 1974).
- 6 U.S.—*Rowan v. U.S. Post Office Dept.*, 397 U.S. 728, 90 S. Ct. 1484, 25 L. Ed. 2d 736 (1970); *Moore v. U.S. Postal Service*, 159 Fed. Appx. 265 (2d Cir. 2005).
- 7 U.S.—*Sierra Club v. U.S. Postal Service*, 549 F.2d 1199 (9th Cir. 1976).
- 8 U.S.—*National Rifle Ass'n of America v. U. S. Postal Service*, 407 F. Supp. 88 (D.D.C. 1976).
- 9 U.S.—*Rowan v. U.S. Post Office Dept.*, 397 U.S. 728, 90 S. Ct. 1484, 25 L. Ed. 2d 736 (1970); *U.S. v. Lange*, 466 F.2d 1021 (9th Cir. 1972).
- 10 U.S.—*U. S. Postal Service v. Athena Products, Ltd.*, 654 F.2d 362 (5th Cir. 1981).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

3. Public Facilities and Services

§ 2405. Water services

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4372

A due process claim predicated on the denial of water supply services by a governmental entity is not sustainable in the absence of a protected property interest in the services claimed; a municipality or other governmental unit that provides water service to its members must comply with due process requirements.

A due process claim predicated on the denial of water supply services by a governmental entity is not sustainable in the absence of a protected property interest in the services claimed.¹

A protectable property interest in water services may be established, subject to payment and reasonable connection requirements, based on a statutory intent to provide water service to all users, as under a city charter offering service to all inhabitants, not subject to termination at will but only on enumerated conditions and pre-and-post-deprivation procedures.² A state's statutory and regulatory laws do not create a property interest in the continued receipt of water by a property owner from a town water department when the department is not a public utility under the statutes but is a municipally owned utility subject to ordinances without a just cause termination requirement.³ A contract, however, even if only implied, is sufficient to create the requisite property interest in the continuation of water services.⁴

A noncustomer of a water district, lacking a contractual or third party beneficiary relationship with the district, has no protectable property interest in the water services of the district for due process purposes.⁵ A property developer seeking a commitment of municipal water services to a proposed new subdivision is without a protected property interest in city water services for purposes of a due process claim for the denial of services.⁶

Generally, a municipality or other governmental unit which supplies water services to its members must comply with due process in so doing,⁷ affording due process to a person before an existing service is terminated.⁸ The termination of existing water services generally requires predeprivation notice and a hearing, but a full evidentiary hearing is not required.⁹ A procedure fails to provide the required due process safeguards when it entails merely sending a delinquency card informing the user that service is to be disconnected and including only a telephone number but no other information as to procedures, formal or informal, particularly since the actual procedure afforded if a call is made is entirely discretionary with the town officials.¹⁰

A city's actions compelling a tenant to assume a landlord's payment obligation in order to have water service reconnected and avoid being forced from the home are not rationally related to the city's interest in collecting a delinquent water bill and thus violate the tenant's substantive due process rights; while a city can enact policies which enable it to reach its fiscal goals, it cannot go so far as to pressure a tenant into assuming a landlord's debt in order to maintain a service the city has agreed to provide.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Restaurant owner sufficiently alleged that city officials' actions in shutting off water service to her building for five months in effort to prevent her from hosting events after a suspected gang-related shooting began at a large birthday party held at her restaurant were arbitrary and capricious, as would support her substantive due process claim; owner stated that shooting had no connection to her business and that she could not hold another event the weekend after the shooting because of damages from the shooting, so that water shutoff could not rationally prevent further violence, and that her requests to have water turned back on were denied, but goal of preventing future violent incidents was completely accomplished by termination of her business license. [U.S. Const. Amend. 14. Johnson v. City of Saginaw, Michigan, 980 F.3d 497 \(6th Cir. 2020\).](#)

City residents plausibly alleged, as required to state a claim, that Michigan Department of Environmental Quality's (MDEQ) District Supervisor was deliberately indifferent to their substantive due process right to bodily integrity, in § 1983 actions arising from lead contamination and legionella contamination in city's water supply, by alleging that Supervisor, despite knowing that city's switch to interim source of water during development of new long-term source would require significant water treatment, did not stop the switch even after learning that city's water treatment plant was not ready, and that he lied to Environmental Protection Agency (EPA) employee, when MDEQ came under EPA scrutiny for lead contamination, by telling him that city was using corrosion control. [U.S. Const. Amend. 14; 42 U.S.C.A. § 1983; Fed. R. Civ. P. 12\(b\)\(6\). In re Flint Water Cases, 960 F.3d 303 \(6th Cir. 2020\).](#)

Residents of city which suffered a water contamination crisis failed to state a bodily-integrity substantive due process claim against two employees of Michigan Department of Health and Human Services (MDHHS), absent any allegation that employees' inaction with regard to information indicating children had increased blood lead levels in city switch of city's water source from Detroit Water and Sewerage Department (DWSD) to river with water known for its corrosivity caused city's residents to consume or continue to consume lead-tainted water. [U.S. Const. Amend. 14. Guertin v. State, 912 F.3d 907 \(6th Cir. 2019\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*L & F Homes and Development, L.L.C. v. City of Gulfport, Miss.*, 134 S. Ct. 1038, 188 L. Ed. 2d 122 (2014); *Midkiff v. Adams County Regional Water District*, 409 F.3d 758, 2005 FED App. 0226P (6th Cir. 2005); *Foothills of Fernley, LLC v. City of Fernley*, 355 Fed. Appx. 109 (9th Cir. 2009); *Wayt v. Town of Crothersville*, 866 F. Supp. 2d 1008 (S.D. Ind. 2012).
Tex.—*Gatesco Q.M., Ltd. v. City of Houston*, 333 S.W.3d 338 (Tex. App. Houston 14th Dist. 2010).
Purchaser "as is" without meter accrues no interest
U.S.—*Sherman v. County of Maui*, 191 Fed. Appx. 535 (9th Cir. 2006).
- 2 U.S.—*Brown v. City of Barre, Vt.*, 878 F. Supp. 2d 469 (D. Vt. 2012).
City ordinance as source of interest
U.S.—*Pilchen v. City of Auburn, N.Y.*, 728 F. Supp. 2d 192 (N.D. N.Y. 2010).
- 3 U.S.—*Wayt v. Town of Crothersville*, 866 F. Supp. 2d 1008 (S.D. Ind. 2012).
- 4 U.S.—*Wayt v. Town of Crothersville*, 866 F. Supp. 2d 1008 (S.D. Ind. 2012).
- 5 U.S.—*Midkiff v. Adams County Regional Water District*, 409 F.3d 758, 2005 FED App. 0226P (6th Cir. 2005).
- 6 U.S.—*L & F Homes and Development, L.L.C. v. City of Gulfport, Miss.*, 134 S. Ct. 1038, 188 L. Ed. 2d 122 (2014).
- 7 U.S.—*Pilchen v. City of Auburn, N.Y.*, 728 F. Supp. 2d 192 (N.D. N.Y. 2010); *Manza v. Newhard*, 915 F. Supp. 2d 638 (S.D. N.Y. 2013); *Brown v. City of Barre, Vt.*, 878 F. Supp. 2d 469 (D. Vt. 2012).
- 8 U.S.—*Wayt v. Town of Crothersville*, 866 F. Supp. 2d 1008 (S.D. Ind. 2012); *Pilchen v. City of Auburn, N.Y.*, 728 F. Supp. 2d 192 (N.D. N.Y. 2010); *Manza v. Newhard*, 915 F. Supp. 2d 638 (S.D. N.Y. 2013).
Kan.—*Dedeke v. Rural Water Dist. No. 5 Leavenworth County, Kan.*, 229 Kan. 242, 623 P.2d 1324 (1981).
Or.—*Gass v. Water Resources Dept.*, 43 Or. App. 825, 604 P.2d 432 (1979).
Utah—*Whitmer v. City of Lindon*, 943 P.2d 226 (Utah 1997).
- 9 U.S.—*Manza v. Newhard*, 915 F. Supp. 2d 638 (S.D. N.Y. 2013).
- 10 U.S.—*Wayt v. Town of Crothersville*, 866 F. Supp. 2d 1008 (S.D. Ind. 2012).
- 11 U.S.—*Pilchen v. City of Auburn, N.Y.*, 728 F. Supp. 2d 192 (N.D. N.Y. 2010).

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16D C.J.S. Constitutional Law § 2406

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

4. Contempt Proceedings

§ 2406. General standards and principles

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4493 to 4495

Due process applies to contempt proceedings and requires that a contemnor be given adequate notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

Due process requires that a potential contemnor be given notice and a hearing regardless of whether the contempt is civil or criminal in nature,¹ and a contempt order is void if it violates due process.² When a civil contempt is at issue, due process allows a state to provide fewer procedural protections than in a criminal case.³ Conversely, the procedural safeguards required are greater in criminal contempt proceedings⁴ since criminal penalties may not be imposed on someone who has not been afforded the due process protections that the Constitution requires with respect to criminal proceedings.⁵ An individual accused of criminal contempt is entitled to traditional due process protections, unless the accused's misconduct occurs under the eye or within the view of the court.⁶ Thus, the initial touchstone for determining the due process rights of a defendant in contempt proceedings lies in the characterization of the particular contempt as either civil or criminal.⁷

Direct contempt that occurs in court's presence may be immediately adjudged and sanctioned summarily,⁸ and except for serious criminal contempt in which jury trial is required, the traditional distinction between civil and criminal contempt proceedings does not pertain to direct contempt.⁹

Due process in the prosecution of proceedings for indirect or constructive contempt, or contempt committed in whole or an essential part out of the immediate presence of the court and, therefore, dependent for its proof on evidence of some kind, requires that the accused be advised of the charges and be given a reasonable opportunity to meet them by way of defense or explanation.¹⁰ In the case of contempt involving out-of-court disobedience to complex injunctions, criminal procedural protections are necessary and appropriate to protect the due process rights of parties and prevent the arbitrary exercise of judicial power, given that such contempt does not obstruct the court's ability to adjudicate the proceedings before the court; and the risk of erroneous deprivation from the lack of a neutral fact finder may possibly be substantial.¹¹

Factors useful in deciding what specific safeguards due process requires in order to make a civil contempt proceeding fundamentally fair include: (1) the nature of the private interest that will be affected, (2) the comparative risk of an erroneous deprivation of that interest with and without additional or substitute procedural safeguards, and (3) the nature and magnitude of any countervailing interest in not providing additional or substitute procedural requirements.¹²

Procedural due process protections in contempt proceedings require that before a person is held in contempt for failure to comply with a court order, the person must be given adequate notice¹³ and an opportunity to be heard,¹⁴ appropriate to the nature of the case,¹⁵ at a meaningful time and in a meaningful manner.¹⁶ Civil discovery and an evidentiary hearing may be required to resolve relevant factual issues in civil contempt proceedings.¹⁷ The customary procedural due process safeguards of notice and a hearing ensure that the parties or their attorneys defending against a motion seeking an order of contempt have an opportunity to explain the conduct deemed deficient before the contempt is found.¹⁸ An unrepresented witness for persons who subsequently were found in contempt could not be found to be in contempt of an injunction not entered against the witness and on a motion that did not name the witness as person against whom contempt should be entered, without a due process notice and hearing, even if the witness aided or abetted or acted in concert with the named defendant or a privy in violating the injunction.¹⁹

Jury trial.

A jury trial is not essential to due process of law in a civil contempt proceeding²⁰ but may be required in cases of serious civil contempt, involving punitive sanctions,²¹ and a jury trial is required in the case of serious criminal contempt.²²

Grand jury witnesses.

When a statute provides a witness before a state grand jury with immunity from prosecution on matters on which testimony is sought, punishment for refusal to testify does not constitute a deprivation of any constitutional rights,²³ and the Constitution does not require a definitive resolution of collateral questions as a condition precedent to a valid contempt conviction.²⁴

Review of contempt proceedings.

Procedural due process requires making a record available to facilitate appellate review.²⁵ After a conviction, a sufficient review of the facts to ascertain whether a contempt was committed does not deprive the defendant of due process of law.²⁶ An appeal and affirmance satisfies the contemnor's right to due process of law with respect to the validity of a contempt finding, and there is no right to relitigate the matter in remand proceedings.²⁷

CUMULATIVE SUPPLEMENT

Cases:

Attorney for owner of test preparation company was not provided adequate due process with respect to charges of contempt arising from alleged violation of injunction in underlying trademark litigation, where attorney had no notice that he could be held in contempt. [U.S.C.A. Const.Amend. 5. Test Masters Educational Services, Inc. v. Robin Singh Educational Services, Inc., 799 F.3d 437 \(5th Cir. 2015\).](#)

Due process requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. [U.S. Const. Amend. 14; Ohio Rev. Code Ann. § 2705.02. Matter of D.S.S., 2020-Ohio-5387, 163 N.E.3d 59 \(Ohio Ct. App. 11th Dist. Portage County 2020\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S.—International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 114 S. Ct. 2552, 129 L. Ed. 2d 642 \(1994\); Marshak v. Treadwell, 595 F.3d 478 \(3d Cir. 2009\).](#)
- 2 [U.S.—Turner v. Rogers, 131 S. Ct. 2507, 180 L. Ed. 2d 452 \(2011\).](#)
[Tex.—In re Office of Atty. Gen., 422 S.W.3d 623 \(Tex. 2013\).](#)
- 3 [U.S.—Turner v. Rogers, 131 S. Ct. 2507, 180 L. Ed. 2d 452 \(2011\).](#)
Fundamental fairness required
[Fla.—Haeberli v. Haeberli, 157 So. 3d 489 \(Fla. 5th DCA 2015\).](#)
- 4 [U.S.—International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 114 S. Ct. 2552, 129 L. Ed. 2d 642 \(1994\); Shillitani v. U.S., 384 U.S. 364, 86 S. Ct. 1531, 16 L. Ed. 2d 622 \(1966\); U.S. v. Harris, 582 F.3d 512 \(3d Cir. 2009\).](#)
[Tex.—Byrd v. Phillip Galyen, P.C., 430 S.W.3d 515 \(Tex. App. Fort Worth 2014\), review denied, \(Oct. 3, 2014\).](#)
- 5 [U.S.—International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 114 S. Ct. 2552, 129 L. Ed. 2d 642 \(1994\); Hicks on Behalf of Feiock v. Feiock, 485 U.S. 624, 108 S. Ct. 1423, 99 L. Ed. 2d 721 \(1988\); Brandt v. Gooding, 636 F.3d 124 \(4th Cir. 2011\); F.T.C. v. Kuykendall, 371 F.3d 745 \(10th Cir. 2004\).](#)
[Ala.—Byrd v. State, 10 So. 3d 624 \(Ala. Crim. App. 2008\).](#)
[La.—State in Interest of J.M., 147 So. 3d 1270 \(La. Ct. App. 4th Cir. 2014\), writ denied, 152 So. 3d 184 \(La. 2014\) and petition for certiorari filed \(U.S. Feb. 5, 2015\).](#)
[Md.—Espinosa v. State, 198 Md. App. 354, 17 A.3d 754 \(2011\).](#)
[N.M.—Concha v. Sanchez, 2011-NMSC-031, 150 N.M. 268, 258 P.3d 1060, 82 A.L.R.6th 659 \(2011\).](#)
[N.C.—GE Betz, Inc. v. Conrad, 752 S.E.2d 634 \(N.C. Ct. App. 2013\) writ denied, review denied, 766 S.E.2d 837 \(N.C. 2014\).](#)
[Ohio—Faulkner v. Pegram, 191 Ohio App. 3d 676, 2010-Ohio-6614, 947 N.E.2d 269 \(5th Dist. Stark County 2010\).](#)
- 6 [U.S.—Brandt v. Gooding, 636 F.3d 124 \(4th Cir. 2011\).](#)
[Kan.—In re Marriage of Shelhamer, 50 Kan. App. 2d 152, 323 P.3d 184 \(2014\).](#)
[Ohio—In re Guardianship of Finan, 2014-Ohio-3572, 18 N.E.3d 459 \(Ohio Ct. App. 5th Dist. Stark County 2014\).](#)
Charges, response, and witnesses
[Ga.—Lewis v. State, 330 Ga. App. 412, 767 S.E.2d 771 \(2014\), cert. granted \(Mar. 30, 2015\).](#)

Burden remains on state

Ill.—*People v. Perez*, 2014 IL App (3d) 120978, 385 Ill. Dec. 436, 18 N.E.3d 981 (App. Ct. 3d Dist. 2014).

As to the due process right to counsel in contempt proceedings, generally, see § 2407.

As to the summary contempt proceedings for direct contempt, generally, see § 2409.

U.S.—*Crowe v. Smith*, 151 F.3d 217 (5th Cir. 1998).

§ 2409.

U.S.—*International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994).

U.S.—*Harris v. U.S.*, 382 U.S. 162, 86 S. Ct. 352, 15 L. Ed. 2d 240 (1965); *Brandt v. Gooding*, 636 F.3d 124 (4th Cir. 2011).

Contempt of state legislature

U.S.—*Groppi v. Leslie*, 404 U.S. 496, 92 S. Ct. 582, 30 L. Ed. 2d 632 (1972).

More significant requirements for indirect contempt

Ala.—*Byrd v. State*, 10 So. 3d 624 (Ala. Crim. App. 2008).

U.S.—*International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994).

U.S.—*Turner v. Rogers*, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).

U.S.—*U.S. v. Peoples*, 698 F.3d 185 (4th Cir. 2012), cert. denied, 133 S. Ct. 915, 184 L. Ed. 2d 703 (2013); *Waste Management of Washington, Inc. v. Kattler*, 776 F.3d 336 (5th Cir. 2015); *F.T.C. v. Neiswonger*, 580 F.3d 769 (8th Cir. 2009); *F.T.C. v. Leshin*, 719 F.3d 1227 (11th Cir. 2013), cert. denied, 134 S. Ct. 901, 187 L. Ed. 2d 776 (2014).

Conn.—*Gagne v. Vaccaro*, 154 Conn. App. 656, 109 A.3d 500 (2015).

Fla.—*Haerberli v. Haerberli*, 157 So. 3d 489 (Fla. 5th DCA 2015).

Ind.—*Akiwumi v. Akiwumi*, 23 N.E.3d 734 (Ind. Ct. App. 2014).

Notice of time and place of hearing

U.S.—*Autotech Technologies LP v. Integral Research & Development Corp.*, 499 F.3d 737 (7th Cir. 2007).

Two explicit notices provided

U.S.—*U.S. v. Conces*, 507 F.3d 1028 (6th Cir. 2007).

Show cause order sufficient

A show cause order is sufficient when clearly outlining the conditions under which the party will be allowed to be heard on the question of contempt.

U.S.—*ClearOne Communications, Inc. v. Bowers*, 651 F.3d 1200 (10th Cir. 2011).

Motion for rule to show cause not sufficient

The motion is sufficient only on the issue of noncompliance with the subject subpoena, not for an adjudication of contempt for noncompliance.

U.S.—*U.S. S.E.C. v. Hyatt*, 621 F.3d 687, 77 Fed. R. Serv. 3d 565 (7th Cir. 2010).

U.S.—*U.S. v. Conces*, 507 F.3d 1028 (6th Cir. 2007); *F.T.C. v. Neiswonger*, 580 F.3d 769 (8th Cir. 2009); *F.T.C. v. Leshin*, 719 F.3d 1227 (11th Cir. 2013), cert. denied, 134 S. Ct. 901, 187 L. Ed. 2d 776 (2014).

Conn.—*Gagne v. Vaccaro*, 154 Conn. App. 656, 109 A.3d 500 (2015).

Fla.—*Haerberli v. Haerberli*, 157 So. 3d 489 (Fla. 5th DCA 2015).

Ind.—*Akiwumi v. Akiwumi*, 23 N.E.3d 734 (Ind. Ct. App. 2014).

Opportunity to contest the issue

U.S.—*Autotech Technologies LP v. Integral Research & Development Corp.*, 499 F.3d 737 (7th Cir. 2007).

Explanation opportunity provided by court

U.S.—*U.S. v. Ford*, 514 F.3d 1047 (10th Cir. 2008).

U.S.—*ClearOne Communications, Inc. v. Bowers*, 651 F.3d 1200 (10th Cir. 2011).

U.S.—*U.S. v. Peoples*, 698 F.3d 185 (4th Cir. 2012), cert. denied, 133 S. Ct. 915, 184 L. Ed. 2d 703 (2013).

U.S.—*Tranzact Technologies, Inc. v. 1Source Worldsite*, 406 F.3d 851 (7th Cir. 2005).

Conn.—*Gagne v. Vaccaro*, 154 Conn. App. 656, 109 A.3d 500 (2015).

U.S.—*Marshak v. Treadwell*, 595 F.3d 478 (3d Cir. 2009).

U.S.—*Marshak v. Treadwell*, 595 F.3d 478 (3d Cir. 2009).

U.S.—*Shillitani v. U.S.*, 384 U.S. 364, 86 S. Ct. 1531, 16 L. Ed. 2d 622 (1966).

Not required for compensatory sanctions

U.S.—*Lasar v. Ford Motor Co.*, 399 F.3d 1101 (9th Cir. 2005).

Complexity does not trigger civil jury trial

U.S.—*F.T.C. v. Kuykendall*, 371 F.3d 745 (10th Cir. 2004).

21 U.S.—*Lasar v. Ford Motor Co.*, 399 F.3d 1101 (9th Cir. 2005).

22 U.S.—*International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994).

23 U.S.—*Regan v. People of State of New York*, 349 U.S. 58, 75 S. Ct. 585, 99 L. Ed. 883 (1955).

Notice not required

U.S.—*U.S. v. Petito*, 671 F.2d 68, 9 Fed. R. Evid. Serv. 1594, 76 A.L.R. Fed. 785 (2d Cir. 1982).

24 U.S.—*Regan v. People of State of New York*, 349 U.S. 58, 75 S. Ct. 585, 99 L. Ed. 883 (1955).

25 U.S.—*Marshak v. Treadwell*, 595 F.3d 478 (3d Cir. 2009).

26 U.S.—*Fisher v. Pace*, 336 U.S. 155, 69 S. Ct. 425, 93 L. Ed. 569 (1949).

27 Ala.—*Alabama State Bar v. Caffey*, 938 So. 2d 942 (Ala. 2006).

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16D C.J.S. Constitutional Law § 2407

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

4. Contempt Proceedings

§ 2407. Right to counsel

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4493 to 4495

Due process in criminal contempt proceedings includes the right to assistance of counsel except in cases of direct contempt; civil contempt proceedings may require the assistance of counsel and the appointment of counsel, as determined on a case-by-case basis, taking account of opposing interests, as well as the probable value of additional or substitute procedural safeguards.

In criminal contempt proceedings, traditional due process protections include the assistance of counsel, if requested,¹ unless the contempt conduct occurs under the eye or within the view of the court,² warranting summary contempt proceedings.³ The failure to inform one charged with criminal contempt of the right counsel is a violation of the accused's due process rights.⁴

In civil contempt proceedings for indirect contempt, the defendant generally has the right to the assistance of counsel,⁵ and in contempt proceedings involving serious contempt fines of a criminal nature, due process requires a right to counsel.⁶ Whether due process requires providing counsel to an indigent defendant in civil contempt proceedings is a determination made on a case-by-case basis.⁷ Due process does not always require the provision of counsel in civil proceedings when incarceration is

threatened, and in determining whether due process requires a right to counsel, a court must take account of opposing interests as well as consider the probable value of additional or substitute procedural safeguards.⁸ Due process does not automatically require providing counsel at civil contempt proceedings to an indigent individual who is subject to a child support order even if that individual faces incarceration for up to a year; in particular, due process does not require providing counsel when the opposing parent or other custodian to whom support funds are owed is not represented by counsel and the state provides alternative procedural safeguards equivalent to adequate notice of the importance of ability to pay, fair opportunity to present, and to dispute, relevant information, and court findings.⁹ Procedural safeguards which, if employed together, can significantly reduce the risk of an erroneous deprivation of liberty in the absence of counsel in civil contempt proceedings in child support cases when incarceration is threatened, include (1) notice to the defendant that the ability to pay is a critical issue in the contempt proceeding; (2) the use of a form or the equivalent to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about financial status; and (4) an express finding by the court that the defendant has the ability to pay.¹⁰

Due process does not guarantee an indigent the right to appointed counsel in a civil contempt purge hearing involving the nonpayment of child support obligations when the indigent was previously represented by counsel at the original civil contempt proceeding.¹¹

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Footnotes

- 1 U.S.—*Brandt v. Gooding*, 636 F.3d 124 (4th Cir. 2011).
Conn.—*Gagne v. Vaccaro*, 154 Conn. App. 656, 109 A.3d 500 (2015).
Ga.—*Apoian v. State*, 313 Ga. App. 800, 723 S.E.2d 35 (2012).
Kan.—*In re Marriage of Shelhamer*, 50 Kan. App. 2d 152, 323 P.3d 184 (2014).
Ky.—*Riley v. Gibson*, 338 S.W.3d 230 (Ky. 2011).
N.M.—*Concha v. Sanchez*, 2011-NMSC-031, 150 N.M. 268, 258 P.3d 1060, 82 A.L.R.6th 659 (2011).
Ohio—*In re Guardianship of Finan*, 2014-Ohio-3572, 18 N.E.3d 459 (Ohio Ct. App. 5th Dist. Stark County 2014).
Utah—*LD III, LLC v. BBRD, LC*, 2013 UT App 115, 303 P.3d 1017 (Utah Ct. App. 2013).
Violation of civil protection order
Trial court judges must be scrupulously aware of due process considerations in indirect criminal contempt proceedings relating to violations of civil protection orders in intrafamily offense cases and should afford a defendant adequate protections, including an attorney.
D.C.—*In re Jackson*, 51 A.3d 529 (D.C. 2012).
- 2 U.S.—*Brandt v. Gooding*, 636 F.3d 124 (4th Cir. 2011).
N.M.—*Concha v. Sanchez*, 2011-NMSC-031, 150 N.M. 268, 258 P.3d 1060, 82 A.L.R.6th 659 (2011).
Utah—*LD III, LLC v. BBRD, LC*, 2013 UT App 115, 303 P.3d 1017 (Utah Ct. App. 2013).
- 3 § 2409.
- 4 Ohio—*In re Guardianship of Finan*, 2014-Ohio-3572, 18 N.E.3d 459 (Ohio Ct. App. 5th Dist. Stark County 2014).
- 5 Conn.—*Quaranta v. Cooley*, 130 Conn. App. 835, 26 A.3d 643 (2011).
Utah—*Hall v. Hall*, 2013 UT App 280, 316 P.3d 970 (Utah Ct. App. 2013), cert. denied, 329 P.3d 36 (Utah 2014).
- 6 U.S.—*International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994).
- 7 U.S.—*Turner v. Rogers*, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).
N.C.—*Tyll v. Berry*, 758 S.E.2d 411 (N.C. Ct. App. 2014), review denied, 367 N.C. 532, 762 S.E.2d 207 (2014) and appeal dismissed, 367 N.C. 532, 762 S.E.2d 207 (2014).
Wyo.—*State, Dept. of Family Services v. Currier*, 2013 WY 16, 295 P.3d 837 (Wyo. 2013).
Failure to establish indigent status

- 8 N.C.—*Young v. Young*, 736 S.E.2d 538 (N.C. Ct. App. 2012).
U.S.—*Turner v. Rogers*, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).
Sufficient safeguards in place
- 9 Wyo.—*State, Dept. of Family Services v. Currier*, 2013 WY 16, 295 P.3d 837 (Wyo. 2013).
U.S.—*Turner v. Rogers*, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).
N.C.—*Young v. Young*, 736 S.E.2d 538 (N.C. Ct. App. 2012).
- 10 U.S.—*Turner v. Rogers*, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).
- 11 Ohio—*Liming v. Damos*, 133 Ohio St. 3d 509, 2012-Ohio-4783, 979 N.E.2d 297 (2012), cert. denied, 133 S. Ct. 2389, 185 L. Ed. 2d 1106 (2013).

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16D C.J.S. Constitutional Law § 2408

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

4. Contempt Proceedings

§ 2408. Trial before impartial judge

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4493 to 4495

Due process may be violated if a judge tries a contempt committed against the judge or a contempt concerning disobedience to an order rendered by the judge.

Due process requires that a trial on contempt charges be conducted before an impartial tribunal;¹ it must not appear that the judge acted improperly as an advocate.² When a judge charges a defendant with indirect criminal contempt, due process may require the judge's recusal from trying the defendant on the criminal charge,³ and the judge's failure to set the matter for hearing before another judge may constitute a violation of due process.⁴

Due process may be violated if a judge tries a contempt committed against the judge or a contempt concerning disobedience to an order rendered by the judge.⁵ Due process requires that a defendant in a criminal contempt proceeding should be given a public trial before a judge other than the one reviled by the contemnor when the judge is vilified, or becomes embroiled in a running, bitter controversy,⁶ or when there are marked personal feelings that leave a personal sting.⁷ However, a contemnor is not denied due process when the contumacious conduct does not rise to the level of personal vilification and scurrilous attacks

on the judge, and when the judge is not personally enmeshed in the matter, so as to disqualify the judge from pronouncing sentence on the contemnor.⁸

Summary contempt proceedings⁹ do not generally require sentencing by a different judge.¹⁰ However, once the occasion and necessity for the immediate use of a summary contempt power have passed, any attempt by the judge to later resurrect and invoke contempt powers will be subjected to scrutiny by a reviewing court to determine whether the due process right to an impartial judge has been offended.¹¹

It is a violation of due process of law for the judge to sit as a judge-grand jury before which witnesses testify and then preside at a contempt hearing wherein witnesses are adjudged in contempt for their conduct before the one-man grand jury.¹² It is also a denial of due process, when the one-man grand jury conducting its secret grand jury investigation forms the belief that a witness has testified evasively and has given contradictory answers to questions and immediately charges the witness with contempt and immediately convicts and sentences the witness to jail, all without any break in the secrecy, which thereby constitutes a failure to afford the witness a public trial on the contempt charge, without giving the witness a chance to prepare a defense, or an opportunity either to cross-examine grand jury witnesses or to summon witnesses to refute the charge.¹³

A mayor's adjudication and sentencing of an individual on traffic misdemeanor and contempt charges, in the mayor's court, did not violate due process, even if the mayor had a pecuniary interest in the case, when the individual voluntarily entered a plea of no contest on a misdemeanor traffic citation and a plea of guilty to a failure to appear charge, the failure to appear citation was issued by the mayor's court clerk, not the mayor, and the mayor merely performed a ministerial function.¹⁴

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Footnotes

- 1 D.C.—*In re Jackson*, 51 A.3d 529 (D.C. 2012).
Ind.—*A.N. v. K.G.*, 3 N.E.3d 989 (Ind. Ct. App. 2014) *aff'd on reh'g*, 10 N.E.3d 1270 (Ind. Ct. App. 2014).
Appearance of impropriety as misconduct
Miss.—*Mississippi Com'n on Judicial Performance v. Patton*, 57 So. 3d 626 (Miss. 2011).
Independent ex parte investigation by judge
Fla.—*Albert v. Rogers*, 57 So. 3d 233 (Fla. 4th DCA 2011).
Neutral magistrate statute exceptions upheld
Mont.—*Drew v. Montana Tenth Judicial Dist. Court*, 2004 MT 154, 321 Mont. 520, 92 P.3d 1195 (2004).
Ind.—*A.N. v. K.G.*, 3 N.E.3d 989 (Ind. Ct. App. 2014) *aff'd on reh'g*, 10 N.E.3d 1270 (Ind. Ct. App. 2014).
- 2
- 3 Idaho—*State v. Shackelford*, 155 Idaho 454, 314 P.3d 136 (2013).
Kan.—*State v. Sawyer*, 297 Kan. 902, 305 P.3d 608 (2013).
Appointment of special judge required
Ind.—*Bellamy v. State*, 952 N.E.2d 263 (Ind. Ct. App. 2011).
Impermissible role as prosecutor and judge
Fla.—*Sockwell v. State*, 123 So. 3d 585 (Fla. 2d DCA 2012).
Citing judge should be recused
Miss.—*Mississippi Com'n on Judicial Performance v. Harris*, 131 So. 3d 1137 (Miss. 2013).
- 4 Ga.—*In re Hatfield*, 290 Ga. App. 134, 658 S.E.2d 871 (2008).
Ky.—*Schroering v. Hickman*, 229 S.W.3d 591 (Ky. Ct. App. 2007), as modified on other grounds (Apr. 20, 2007).
Miss.—*Corr v. State*, 97 So. 3d 1211 (Miss. 2012).
- 5 Ga.—*In re Hatfield*, 290 Ga. App. 134, 658 S.E.2d 871 (2008).
Mont.—*Drew v. Montana Tenth Judicial Dist. Court*, 2004 MT 154, 321 Mont. 520, 92 P.3d 1195 (2004).
- 6 U.S.—*Taylor v. Hayes*, 418 U.S. 488, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974).
Ind.—*Johnson v. State*, 426 N.E.2d 104 (Ind. Ct. App. 1981).
Required when acts directed against judge

Tenn.—[Daniels v. Grimaldi](#), 342 S.W.3d 511 (Tenn. Ct. App. 2010).

Judge not embroiled in personal controversy

U.S.—[Nakell v. Attorney General of North Carolina](#), 15 F.3d 319 (4th Cir. 1994).

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Disqualification of judge in state proceedings to punish contempt against or involving himself in open court and in his actual presence, 37 A.L.R.4th 1004.

7 U.S.—[Taylor v. Hayes](#), 418 U.S. 488, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974).

Fla.—[Scott v. Anderson](#), 405 So. 2d 228 (Fla. 1st DCA 1981).

8 U.S.—[Ungar v. Sarafite](#), 376 U.S. 575, 84 S. Ct. 841, 11 L. Ed. 2d 921 (1964); [Farmer v. Strickland](#), 652 F.2d 427 (5th Cir. 1981).

Judge not personally embroiled

U.S.—[U.S. v. Galin](#), 222 F.3d 1123, 55 Fed. R. Evid. Serv. 507 (9th Cir. 2000).

9 § 2409.

10 U.S.—[U.S. v. Dowdy](#), 960 F.2d 78 (8th Cir. 1992).

11 Fla.—[Scott v. Anderson](#), 405 So. 2d 228 (Fla. 1st DCA 1981).

12 U.S.—[In re Murchison](#), 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955).

13 U.S.—[In re Oliver](#), 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682 (1948).

14 U.S.—[Bailey v. City of Broadview Heights, Ohio](#), 721 F. Supp. 2d 653 (N.D. Ohio 2010), *aff'd*, 674 F.3d 499 (6th Cir. 2012).

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16D C.J.S. Constitutional Law § 2409

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXII. Particular Applications of Due Process Guaranty

Q. Other Particular Matters

4. Contempt Proceedings

§ 2409. Summary proceedings or punishment

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4493 to 4495

Summary contempt proceedings and punishment are within the constraints of due process of law for a direct contempt or contempt committed in the immediate view and presence of the court, when all the elements are within the personal knowledge or observation of the judge, provided there is a need for speed or immediate action by the court.

Due process imposes limits on the authority to issue a summary contempt order,¹ prohibiting the summary adjudication of indirect contempt² for conduct that does not occur entirely in the presence of the court.³ If some essential elements of the offense are not personally observed by the judge, so that the judge must depend on statements made by others for knowledge about these essential elements, due process requires that the accused be accorded notice and a fair hearing in a contempt proceeding.⁴

Generally, due process of law is not denied when the power to adjudicate and punish is exercised summarily in the case of a direct contempt or contempt committed in the immediate view and presence of the court or tribunal and all the elements of the contempt are within the personal knowledge or observation of the judge or judicial officer,⁵ particularly when immediate punishment is essential to vindicate the authority and dignity of the court.⁶ When summary punishment for contempt is imposed during trial,

the contemnor is normally given an opportunity to speak in the nature of a right of allocution.⁷ Under proper circumstances warranting summary contempt, the defendant is not thereby deprived of the right to a jury trial on the criminal charge.⁸

Even when contempt behavior occurs in the presence of the court, summary punishment without the usual due process protections of notice and opportunity to be heard is not automatically justified.⁹ If there is no need for speed to immediately suppress the contempt behavior or restore order after a serious threat to the proceedings, due process requires notice and a hearing instead of a summary disposition.¹⁰

If there is a substantial issue of a defendant's mental capacity to commit contempt, an element of the crime of contempt is therefore not within the judge's knowledge, and a summary adjudication of contempt is precluded, requiring a separate hearing.¹¹

If punishment for contempt is postponed until after the trial or hearing, and there is no need to impose immediate sanctions to maintain order, due process requires that defendant have an opportunity to be heard.¹² A full-scale trial is not required, but defendant must have notice of the charges and an opportunity to present defenses.¹³ A trial judge's conduct in proceeding summarily after a trial to punish counsel for alleged contempt committed during the trial without giving the counsel an opportunity to be heard in defense or mitigation before adjudging guilt and sentencing denies due process.¹⁴ In contrast, even though punishment for contempt citations issued against defense counsel during a criminal proceeding is deferred until after the trial, due process does not require that defense counsel be heard in defense and mitigation at the conclusion of the trial when counsel is given an opportunity to explain the conduct and address the issue of punishment soon after each incident of contempt, and counsel suffers nothing by delay.¹⁵

Record for review.

The concept of elemental fairness which underlies due process requires such disclosure of facts in every summary contempt case as permits adequate review by an appellate court of contempt citations.¹⁶ To meet constitutional requirements of due process of law, the certificate of the presiding justice must provide an adequate record of the facts underlying a summary adjudication of contempt.¹⁷

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Footnotes

- 1 U.S.—*Pounders v. Watson*, 521 U.S. 982, 117 S. Ct. 2359, 138 L. Ed. 2d 976 (1997).
Requires extraordinary circumstances
U.S.—*Harris v. U.S.*, 382 U.S. 162, 86 S. Ct. 352, 15 L. Ed. 2d 240 (1965); U.S. v. *Glass*, 361 F.3d 580 (9th Cir. 2004).
Exercise sparingly
Conn.—*Hardy v. Superior Court*, Judicial Dist. of Fairfield, 305 Conn. 824, 48 A.3d 50 (2012).
Tenn.—*Daniels v. Grimaldi*, 342 S.W.3d 511 (Tenn. Ct. App. 2010).
Regarded with disfavor
Mass.—*Vizcaino v. Com.*, 462 Mass. 266, 967 N.E.2d 1109 (2012).
Inherent tension with due process
Me.—*State v. Campbell*, 497 A.2d 467 (Me. 1985).
2 Ga.—*Apoian v. State*, 313 Ga. App. 800, 723 S.E.2d 35 (2012).
Ohio—*In re Guardianship of Finan*, 2014-Ohio-3572, 18 N.E.3d 459 (Ohio Ct. App. 5th Dist. Stark County 2014).
Pa.—*Com. v. Moody*, 2012 PA Super 103, 46 A.3d 765 (2012), appeal granted in part on other grounds, 622 Pa. 160, 79 A.3d 1093 (2013).

- Wash.—*State v. Jordan*, 146 Wash. App. 395, 190 P.3d 516 (Div. 2 2008).
- Mass.—*Com. v. Nicholas*, 74 Mass. App. Ct. 164, 905 N.E.2d 118 (2009).
- Va.—*Amos v. Com.*, 61 Va. App. 730, 740 S.E.2d 43 (2013), judgment aff'd, 287 Va. 301, 754 S.E.2d 304 (2014).
- Conduct in courthouse hallway**
- Ky.—*Gormley v. Judicial Conduct Commission*, 332 S.W.3d 717 (Ky. 2010).
- U.S.—*U.S. v. Glass*, 361 F.3d 580 (9th Cir. 2004).
- Mass.—*Com. v. Nicholas*, 74 Mass. App. Ct. 164, 905 N.E.2d 118 (2009).
- Va.—*Amos v. Com.*, 61 Va. App. 730, 740 S.E.2d 43 (2013), judgment aff'd, 287 Va. 301, 754 S.E.2d 304 (2014).
- Must personally observe the acts**
- Pa.—*Com. v. Moody*, 2012 PA Super 103, 46 A.3d 765 (2012), appeal granted in part, 622 Pa. 160, 79 A.3d 1093 (2013).
- Must be actually observed by court**
- U.S.—*Brandt v. Gooding*, 636 F.3d 124 (4th Cir. 2011).
- U.S.—*Fisher v. Pace*, 336 U.S. 155, 69 S. Ct. 425, 93 L. Ed. 569 (1949); *U.S. v. Glass*, 361 F.3d 580 (9th Cir. 2004).
- Conn.—*Hardy v. Superior Court, Judicial Dist. of Fairfield*, 305 Conn. 824, 48 A.3d 50 (2012).
- Tenn.—*Daniels v. Grimaldi*, 342 S.W.3d 511 (Tenn. Ct. App. 2010).
- Recognizing rule**
- Ill.—*People v. Duff*, 361 Ill. Dec. 335, 970 N.E.2d 1281 (App. Ct. 5th Dist. 2012).
- Mass.—*Vizcaino v. Com.*, 462 Mass. 266, 967 N.E.2d 1109 (2012).
- Va.—*Amos v. Com.*, 61 Va. App. 730, 740 S.E.2d 43 (2013), judgment aff'd, 287 Va. 301, 754 S.E.2d 304 (2014).
- Contempt committed in presence of legislature**
- U.S.—*Groppi v. Leslie*, 404 U.S. 496, 92 S. Ct. 582, 30 L. Ed. 2d 632 (1972).
- Refusal to testify or answer further questions**
- U.S.—*Bevan v. Krieger*, 289 U.S. 459, 53 S. Ct. 661, 77 L. Ed. 1316 (1933).
- U.S.—*In re Oliver*, 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682 (1948).
- Purpose to protect the judicial institution**
- Tenn.—*Daniels v. Grimaldi*, 342 S.W.3d 511 (Tenn. Ct. App. 2010).
- Purpose to maintain order in the courtroom**
- Mass.—*Vizcaino v. Com.*, 462 Mass. 266, 967 N.E.2d 1109 (2012).
- U.S.—*Taylor v. Hayes*, 418 U.S. 488, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974); *Groppi v. Leslie*, 404 U.S. 496, 92 S. Ct. 582, 30 L. Ed. 2d 632 (1972).
- Conn.—*Hardy v. Superior Court, Judicial Dist. of Fairfield*, 305 Conn. 824, 48 A.3d 50 (2012).
- Notice and hearing subsequently afforded**
- Mass.—*Com. v. Viust*, 84 Mass. App. Ct. 308, 995 N.E.2d 1133 (2013).
- U.S.—*U.S. v. Cohen*, 510 F.3d 1114, 75 Fed. R. Evid. Serv. 418 (9th Cir. 2007).
- Tex.—*Ex parte Knable*, 818 S.W.2d 811 (Tex. Crim. App. 1991).
- Ohio—*Geary v. Geary*, 2015-Ohio-259, 27 N.E.3d 877 (Ohio Ct. App. 5th Dist. Delaware County 2015).
- Utah—*Gardiner v. York*, 2010 UT App 108, 233 P.3d 500 (Utah Ct. App. 2010).
- Ill.—*People v. Duff*, 361 Ill. Dec. 335, 970 N.E.2d 1281 (App. Ct. 5th Dist. 2012).
- U.S.—*Taylor v. Hayes*, 418 U.S. 488, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974).
- Tenn.—*Daniels v. Grimaldi*, 342 S.W.3d 511 (Tenn. Ct. App. 2010).
- Contempt of legislature**
- U.S.—*Groppi v. Leslie*, 404 U.S. 496, 92 S. Ct. 582, 30 L. Ed. 2d 632 (1972).
- Delayed proceeding requires notice and hearing**
- U.S.—*U.S. v. Glass*, 361 F.3d 580 (9th Cir. 2004).
- U.S.—*Taylor v. Hayes*, 418 U.S. 488, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974).
- U.S.—*Taylor v. Hayes*, 418 U.S. 488, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974).
- U.S.—*Hawk v. Cardoza*, 575 F.2d 732 (9th Cir. 1978).
- D.C.—*In re Gates*, 248 A.2d 671 (D.C. 1968).
- Me.—*In re Steinberger*, 387 A.2d 1121 (Me. 1978).

Review of record dictated by trial court

The appellate court's review of the evidence established at a summary contempt hearing requires a review only of the evidence dictated on the record by the trial court, as a summary hearing by definition entails only evidence observed first-hand from the bench.

Pa.—[Com. v. Moody, 2012 PA Super 103, 46 A.3d 765 \(2012\)](#), appeal granted in part on other grounds, [622 Pa. 160, 79 A.3d 1093 \(2013\)](#).

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